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JAMES H. McKENNEY,
Clerk

RECORD CASE NO. 18107

SUPREME COURT OF THE UNITED STATES.

October TERM, 1901.

Term No. 622 ~~1901~~ 1900

DEVER PICKENS, APPELLANT,

versus

SUSAN C. DENT ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT, AT RICHMOND.

Record Filed April 6, 1901.

10025

TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals,

FOURTH CIRCUIT.

No. 382.

DEVER PICKENS, APPELLANT,

versus

SUSAN C. DENT ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA, AT CLARKSBURG.

INDEX.

	Original.	Printed.
Bill of complaint	1	1
Subpœna and return	11	8
Injunction	12	9
Adjudication of bankruptcy	14	10
Order of reference	15	11
Proceedings before referee	16	12
Order Barbour Circuit Court allowing defendant to file answer	21	14
Supplemental answer of defendant Pickens	22	15
Petition of trustee Henry Haymond	24	16
Decree of Circuit Court of Barbour county	27	18
Order of court	38	25
Notice to dissolve injunction	39	26

	Original.	Printed.
Order of court	40	27
Answer of J. Hop Wood, special commissioner.	41	27
Answer of Susan C. Dent	44	29
Mandate of Supreme Court of Appeals of West Virginia	59	40
Amended mandate	61	41
Answer of Henry Haymond, trustee	63	42
Order of court	66	44
Order of court	67	45
Order of court	68	45
Assignment of errors	69	46
Bond	70	46
Citation	71	47
Clertificate of clerk	72	48

PROCEEDINGS IN UNITED STATES CIRCUIT COURT OF APPEALS.

Stipulation of attorneys	49
Opinion	50
Decree	55
Prayer of appeal to the Supreme Court and the allowance of same	56
Assignment of errors	56
Appeal bond	58
Citation	59
Order to transmit record	59
Clerk's certificate	60

TRANSCRIPT OF RECORD

UNITED STATES OF AMERICA } *ss:*

At a United States Circuit Court of Appeals for the Fourth Circuit, begun and held at the Court House in the city of Richmond on the first Tuesday of February, being the fifth day of the same month, in the year of our Lord one thousand, nine hundred and one.

Present: Hon. NATHAN GOFF, Circuit Judge; Hon. CHARLES H. SIMONTON, Circuit Judge; Hon. WILLIAM H. BRAWLEY, District Judge.

Among others were the following proceedings, to-wit:

No. 382.

Dever Pickens, Appellant, *vs.* Susan C. Dent et al., Appellees.	Appeal from the District Court of the United States for the District of West Virginia.

Be it remembered that heretofore, to-wit: On the 24th day of September, 1900, transcript of the record in the above entitled cause was transmitted and filed in our said Circuit Court of Appeals here, which is as follows, to-wit:

TRANSCRIPT OF RECORD.

Pleas held before the Honorable John J. Jackson, Judge of the District Court of the United States for the District of West Virginia, on the 4th day of August, A. D., 1900, and in the 125th year of the Independence of the United States of America

To the Honorable John J. Jackson, Judge of the District Court of the United States, for the District of West Virginia.

Dever Pickens brings this his bill of complaint against Susan C. Dent, J. Hopp Woods, Special Commissioner and Special Receiver, John D. Pickens, in his own right and as executor of James Pickens, deceased, A. G. Dayton and John J. Davis, trustees, A. G. Dayton, Special Commissioner, S. V. Woods, Special Commissioner, J. W. Greathouse, Edward McDaniel, Milton D. Reed, C. D. Paugh, R. M. Boring, Minnie Coburn Pickens, M. W. Coburn, Ledru Coburn, Albert S. Pickens, M. S. Clevenger, A. H. Young, Emma Walker, Mollie Pickens Martin, Henry Haymond, Trustee, and John D. Pickens, executor of Ann M. Pickens, deceased, as defendants.

Your orator complains and says that on the 27th day of October, 1899, he filed his petition in bankruptcy at Clarksburg, in the United States District Court for the District of West Virginia, praying in said petition to be adjudged a bankrupt; that such proceedings were thereon had that on the 30th day of October, 1899, your orator was duly adjudged a bankrupt, and on like date the said petition was referred to Harvey W. Harmer, one of the referees in bankruptcy for the said court, for such further proceedings as is required by the Acts of Congress relating to bankruptcy. And copies of the order of such adjudication and reference are herewith filed marked, respectively, "Exhibits "A" & "B."

Your orator further shows that as stated by him in the schedules attached to his said petition in bankruptcy he was at the date of the filing of said petition and still is (2) indebted to the following named persons, to-wit:

To Rachel M. Boring in the sum of $1,320.80; to John D. Pickens, executor of the estate of Ann M. Pickens, deceased, in the sum of $4,489.00; to the executor of James Pickens, deceased, in the sum of $4,579.88, and likewise in the further sum of $2,000.00; to Susan C. Dent in the sum $10,000.00, more or less; to Joseph N. B. Crimm in the sum of $35.00, more or less; to Samuel Heatherly in the sum of $200.00, and to Mollie Pickens Martin, *nee* Mollie Pickens, in the sum of $1,000.00, which said several sums are here stated without the addition of the interest accrued thereon, and aggregating the sum of $23,599.03, more or less.

Your orator further states that after such reference, to-wit: On the 18th day of November, 1899, there being no election held upon the part of your orator's said creditors, the said referee appointed one Henry Haymond as trustee of your orator's estatate in bankruptcy, a copy of which order of appointment is herewith filed marked "Exibit C."

Your orator further shows that on the 20th day of November, 1899, defendant, Susan C. Dent, appeared, by her attorney, before the said referee and proved her said claim against the estate of your orator as a bankrupt. Said claim consisting of a judgment at law rendered by the Circuit Court of Barbour county on the 27th day of February, 1892, for the sum of $9,000.00 and of $971.34 costs in such suit, and the further sum of $231.85 costs in the Supreme Court of Appeals of West Virginia, which said debt was then allowed by the said referee against the estate of your orator, and said debt would be released by your orator's discharge in bankruptcy. And a copy of such order of allowance is herewith filed as a part of this bill, marked "Exhibit D."

(3) Your orator further shows that thereafter, to-wit: on the 9th day of March, 1900, defendant, John D. Pickens, appeared before the said referee in person and proved, on his own behalf, against the estate of your orator as a bankrupt, a debt due him as assignee of Rachel M. Boring, amounting to the sum of $1,320.80, with interest thereon from the 3rd day of January, 1888; likewise a debt due the said John D. Pickens as the executor of the estate of James Pickens, deceased, against your orator as a bankrupt, for the sum of $2,000.00 principal, with interest thereon; and likewise a debt due the said John D. Pickens as executor of Ann Maria Pickens, deceased, from the estate of your orator as a bankrupt, for the sum of $4,639.00 with accrued interest thereon; all of which will appear by a copy of the order of allowance made on the said last

named date and herewith filed as a part of this bill, marked "Exhibit E."

Your orator further shows that on the 26th day of January, 1889, the said Susan C Dent instituted her suit in equity in the Circuit Court of Barbour county previous to the rendition of the said judgment in her favor against your orator, praying that a certain conveyance made by your orator to John J Davis and A. G. Dayton, trustees, might be declared fraudulent and set aside as to the plaintiff's demand, and that the real estate of your orator might be subjected to the payment of plaintiffs, demand when the same should be liquidated; that thereafter, to wit: at Rules held in the said Circuit Court on the first Monday in September, 1889, the said Susan C. Dent filed her amended bill of complaint against your orator and others as defendants, alleging the recovery of a judgment against your orator on the 23rd day of July, 1892, for the sum of $10,000.00, which said judgment was thereafter set aside; and thereafter, on the 1st Monday in April, 1893, at Rules held for the said Circuit Court of Barbour county, the said Susan C. Dent filed her second amended bill of complaint against your orator and others as defendants, alleging the (4) recovery of the said judgment for $9,000.00 on the 27th day of February, 1892, and seeking to subject certain of the real estate of your orator to the satisfaction of her said judgment; and in said second amended bill of complaint your orator, in his own right and as executor of James Pickens, deceased, John D. Pickens, in his own right and as executor of James Pickens, deceased, A. G. Dayton and John J. Davis, trustees, A. G. Dayton, special commissioner, S. V. Woods, special commissioner, J. W. Greathouse, Edward McDaniel, Milton D. Reed, C. D. Paugh, R. M. Boring, Ann M. Pickens, Minnie Coburn Pickens, M. W. Coburn, Ledru Coburn, Mollie Pickens, now Mollie Martin, Albert S. Pickens, M. S. Clevenger, A. H. Young, and Emma Walker were made parties defendant.

Your orator further shows that at the time his said petition in bankruptcy was filed and the order adjudicating him a bankrupt entered, the said suit in chancery was still pending on the part of the said Susan C. Dent in the Circuit Court of Barbour county, and that a decree which had been entered therein previous to such time had been annulled and set aside by the Supreme Court of Appeals of the State of West Virginia, and the said suit was thus still undetermined.

Your orator further shows that after his adjudication as a bankrupt he filed his answer in the said chancery pro-

ceeding in the Circuit Court of Barbour county, averring the fact that he had been so adjudicated and that a trustee had been appointed to take charge of his property in whom the title to all of the said property had vested by operation of law; that in said answer he further prayed that the said suit in chancery might be suspended and proceedings therein stayed until after the determination of his said bankruptcy proceeding in your honor's court. All which will more fully appear by a copy of the said answer and of the order filing the same, which are herewith filed as a part of this bill marked Exhibits "F" and "G," respectively.

(5) Your orator further shows that on the 23rd day of February, 1900, the said Henry Haymond, trustee as aforesaid, filed in the said Circuit Court of Barbour county his petition, praying to be made a party defendant in the said chancery cause and asking that his said petition be held and treated as and for his answer therein; a copy of which answer is herewith filed as a part of this bill marked "Exhibit H;" but your orator here charges and avers that the said trustee was not authorized or empowered by any order to intervene in said chancery cause, and that his said intervention was without warrant of law.

Your orator further charges and avers that the said petition was procured to be signed by the said trustee by fraudulent representations made to him of the contents and purposes thereof, and that the said trustee has, since the filing of the same, admitted that he was ignorant of the contents or purposes of said answer and believed at the time he filed the same that it was a step necessary to be taken in order to get into his hands as trustee and under the control of your honor's court the real estate of your orator.

Your orator further shows that on the said 23rd day of February, 1900, the said Circuit Court of Barbour county entered a decree in the chancery cause aforesaid, among other things appointing one J. Hopp Woods special commissioner to sell the land devised to your orator by his father, James Pickens, and directing the said commissioner, unless the amount of the plaintiff's decree, with their costs in the said Circuit Court of Barbour county and in the said Supreme Court of Appeals, should be paid to the said Susan C. Dent within thirty days from the adjournment of the then current term of said court, to sell the said real estate so devised to your orator upon the terms set forth in said decree; and the said J. Hopp Woods, who was likewise by the said Circuit Court appointed a special receiver for the purpose, was directed to take possession of the said

(6) real estate, and rent the same at public auction to the highest responsible bidder for cash, until the 30th day of October, 1900, and the said chancery cause was then referred under said decree to George M. Kittle, Commissioner of the said Circuit Court of Barbour county, to ascertain and report the amount of the liens against the said real estate; a copy of which decree is herewith filed as a part of this bill marked "Exhibit I."

Your orator further shows that the said decree was rendered by the said Circuit Court of Barbour county at the instigation of the said Susan C. Dent, at whose instigation likewise the petition of the said Henry Haymond, trustee, was caused to be filed in the said chancery proceeding. And your orator avers and here charges that the said Susan C. Dent, having proven her said debt before the referee in bankruptcy as aforesaid, previous to the rendition of said decree, elected thereby to submit in all respects to the adjudication of your Honor's Court of Bankruptcy in the premises, and is estopped to proceed further in her said chancery cause in the said Circuit Court of Barbour county.

Your orator further charges and avers that after the pendency of the said bankruptcy proceeding had been made apparent in said chancery cause by the answer filed therein by your orator, it became, and was, the duty of the said Circuit Court to stay further proceedings in said cause in accordance with the prayer of your orator's said answer until the determination of his said bankruptcy proceedings, and that the action of the said Circuit Court in the rendition of the decree aforesaid was without warrant of law.

Your orator further shows that the said decree so rendered by the said Circuit Court of Barbour county, is erroneous and prejudicial to the rights and interests of your (7) orator in this: in that the said decree, as shown by the copy thereof herewith filed, does not finally determine the estate or interest of your orator in the real estate thereby decreed to be sold, it being apparent, from the terms of said decree, that the said Circuit Court of Barbour county was unable to reach any determination upon said question and adjudged your orator to be the owner of an "estate in fee simple, possibly defeasible" liable to be sold for the satisfaction of the plaintiff's decree in said cause; whereas, the estate of your orator in the said land is a fee conditional, and should have been so declared. Your orator further avers that the said decree was erroneous and prejudicial to your orator, in that it decreed the said land to be sold before ascertaining the amounts of the liens and charges upon the same, and that by reason of the uncertainty of the estate described in the said decree, as well as

by the failure of the said court to adjudicate and determine the amount of the debts and liens upon the same, said real estate cannot be sold to the best advantage under said decree, and your orator avers that it can be sold to a better advantage under a decree of your Honor's Court of Bankruptcy, ordering the same to be sold free of all expenses whatsoever and distribute the funds so arising among the several creditors of your orator who shall prove their debts as their respective rights may appear. And your orator avers and charges that the action of the said Susan C. Dent in causing the said decree to be entered in the said Circuit Court of Barbour county, as well as in fraudulently procuring the petition of the said Henry Raymond, trustee, to be therein filed, was taken for the sole purpose of preventing your Honor's said Court of Bankruptcy from administering upon the estate of your orator and adjudicating the several rights and priorities of your orator's various creditors; and that such action was not only without warrant of law but (8) was a fraud upon the rights of your orator and an effort to defeat the jurisdiction of this court.

Your orator further charges that the said J. Hopp Woods, special receiver as aforesaid, is proceeding to execute the said decree and has caused advertisement to be given of his purpose to rent the said real estate at public auction on the 2nd day of April, 1900, and your orator avers that, unless sooner enjoined, the said J. Hopp Woods, special receiver, will offer the said land for rent at public auction on that date; and that he will, as your orator is informed and believes, proceed to sell said real estate and distribute the proceeds arising from the sale of the same under the decree of the Circuit Court of Barbour county without reference to the proceedings in bankruptcy in your Honor's court, and that the said funds will be there paid to the creditors then before the said Circuit Court, whether the same shall have proven their claim in your Honor's court of bankruptcy or not, to the manifest prejudice of the residue of your orator's said creditors.

Your orator further charges and avers that the costs and expenses of making sale of your orator's said assets under the decree of the said Circuit Court of Barbour county will be much larger than the costs and expenses of administering the same under the order of your Honor's court of bankruptcy.

Your orator further shows that the said decree is manifestly injurious and erroneous to your orator and his said creditors in that it does not adjudicate a lien retained in the will of James Pickens, deceased, upon the land therein devised to your orator, for the sum of $2,000.00, in favor of

the executors of James Pickens, dec'd, to be the first lien upon the said real estate; whereas your orator avers that said sum constitutes the first, or purchase money lien upon the said real estate, being the same parcel decreed to be (9) rented and sold by the said J. Hopp Woods, as will fully appear by a copy of the said will which is herewith filed as a part of this bill marked "Exhibit J". And your orator avers that, as will appear by the said will, the estate of your orator in the said land is a conditional fee, with remainder over upon certain contingencies to the heirs of James Pickens; that Jennie B. Pickens & ——— Young, two of the said heirs of James Pickens, so interested in remainder in the said lands are not made parties to the said suit nor bound by the adjudication therein: and your orator avers that a sale of his said real estate under the said decree will on account of the many mistakes and errors therein contained result to the prejudice of the interests both of your orator and his said creditors.

Your orator further charges and avers that he has been informed and believes that certain of his said creditors are now threatening to apply to the Supreme Court of Appeals of West Virginia for an appeal from and supersedeas to the said decree on account of the many errors therein contained, and your orator believes that unless the further prosecution of the suit shall be stayed by your Honor, said appeal will be taken, and the final determination of the administration of your orator's estate further delayed.

In as much, therefore, as your orator is without remedy save only in a court of equity where alone such matters are properly cognizable, your orator prays that the said Susan C. Dent, J. Hopp Woods, special commissioner and special receiver, Henry Haymond, trustee, and all others the parties named in the caption of this bill may be made parties defendant thereto and required to answer the same; that a writ of subpœna issue directed to the said defendants and each of them, requiring and commanding each of them to appear and answer this bill; that the said Susan C. Dent and each of the defendants afore- (10) said parties to the said suit be inhibited and restrained from all further proceedings in the said chancery cause of Susan C. Dent *vs.* your orator and others, pending in the said Circuit Court of Barbour county, until the termination of the said bankruptcy proceedings; that the said J. Hopp Woods, as special receiver and special commissioner, be enjoined and restrained from proceeding under said decree to either rent or sell the said parcels of land mentioned and described in the will of the said James Pickens, which were therein devised to your orator, during the pendency of the

said bankruptcy proceedings or until the further order of this court, and that he may be required to turn over and deliver up to the said Henry Haymond, trustee, the possession and control of said property, to be by him administered as such trustee under the direction and orders of the court in bankruptcy, and grant such other further and general relief as the nature of the case demands or as shall seem proper.

(Signed) DEVER PICKENS.

UNITED STATES OF AMERICA, }
District of West Virginia, } to-wit:

I, Dever Pickens, the plaintiff named in the foregoing bill, being duly sworn, depose and say that the facts and allegations therein contained are true, except so far as they are therein stated to be upon information or belief, and that so far as they are therein stated to be upon information he believes them to be true.

(Signed) DEVER PICKENS.

Taken, subscribed and sworn to before me this 29th day of March, 1900.

(Signed) A. S. LONG,
Notary Public.

(Endorsed:)

Filed 31 day of March, 1900.

(Signed) JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

(11) UNITED STATES OF AMERICA, }
District of West Virginia, } *ss.:*

The President of the United States of America to the Marshall of the District of West Virginia—Greeting:

You are commanded to summon Susan C. Dent, J. Hop Woods, special commissioner; John D. Pickens, in his own right and as executor of James Pickens, deceased; A. G. Dayton and John J. Davis, trustees; A. G. Dayton, special commissioner; S. V. Woods, special commissioner; J. W. Greathouse, Edward McDaniel, Milton D. Reed, C. D. Paugh, R. M. Boring, Minnie Coburn Pickens, M. W. Coburn, Ledru Coburn, Albert S. Pickens, M. S. Clevenger, A. H. Young, Emma Walker, Mollie Pickens Martin, and John D. Pickens, executors of Ann M. Pickens, deceased, citizens of and resident in the State of West Virginia, if they be found in your district, to be and appear in

the District Court of the United States for the District of West Virginia aforesaid, at rules to be held in the clerk's office of said court, at Clarksburg, on the first Monday in May next, to answer a certain bill in chancery, filed and exhibited in said court against them by Dever Pickens. Hereof you are not to fail under the penalty of the law thence ensuing. And have then and there this writ.

Witness, the Honorable John J. Jackson, Judge of the District Court of the United States for the District of West Virginia, this 31st day of March, A. D. 1900, and in the 124th year of the Independence of the United States of America.

Attest:

JASPER Y. MOORE, Clerk.

(12) MEMORANDUM.—The said defendants required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of May 1900, otherwise the said bill may be taken *pro confesso*.

(Signed) JASPER Y. MOORE, Clerk.

Attest:

JASPER Y. MOORE,
Clerk D. C. U. S. D. W. Va.

MEMO.—Enjoining, restraining and inhibiting Susan C. Dent, J. Hop Woods, Special Commissioner and Special Receiver, Henry Haymond, trustee, John D. Pickens in his own right and as executor of James Pickens, deceased, A. G. Dayton and John J. Davis trustees, A. G. Dayton, Special Commissioner, S. V. Woods, Special Commissioner, J. W. Greathouse, Edward McDaniel, Milton D. Reed, C. D. Paugh, R. M. Boring, Minnie Coburn Pickens, M. W. Coburn, Ledru Coburn, Albert S. Pickens, M. S. Clevenger, A. H. Young, Emma Walker, Mollie Pickens Martin, and John D. Pickens, executor of Ann M. Pickens, deceased, from all further proceedings in the chancery cause of Susan C. Dent, and each of the said parties from prosecuting in a suit now pending in the Circuit Court of Barbour county on the Chancery side of said court against the said Dever Pickens, and enjoining and restraining J. Hop Woods, Special Receiver, from renting or making sale of the real estate of the said Dever Pickens under the decree of said court until the further order of this court.

(Signed) "JACKSON, Judge.

March 31, 1900."

A Copy Test:

JASPER Y. MOORE,
Clerk D. C. U. S. D. W. Va.

MARSHAL'S RETURN.

(13) Dever Pickens, }
vs. }
Susan C. Dent, et als. }

Executed the within writs, consisting of a subpœna in chancery and restraining order, by delivering certified copies of each upon the following named persons, upon the dates and at the places indicated, viz.:

April 2, 1900, on J. Hop Woods, S. V. Woods, A. G. Dayton, trustee, A. G. Dayton, Special Commissioner, at Philippi, Barbour county.

April 4, 1900, on Henry Haymond, trustee, at Clarksburg, Harrison county; J. D. Pickens, J. D. Pickens, executor of Ann Pickens, deceased, J. D. Pickens, executor of James Pickens, deceased, at Quiet Dell, Harrison county; Albert S. Pickens and R. M. Boring, at Quiet Dell; on Minnie C. Pickens, Mrs. A. H. Young and Mollie P. Martin, at Peal Tree, Barbour county; on Edward McDonnell, C. D. Paugh, Emma Walker and John Greathouse, at Overfield, Barbour county; on M. D. Reed, at Elk city, Barbour county.

April 5, 1900, on Susan E. Dent, at 8 miles east of Clarksburg, Harrison county.

April 9, 1900, on John J. Davis, at Clarksburg, Harrison Co.

(Signed) J. K. THOMPSON.
U. S. Marshal, D. W. Va.
By D. R. JACKSON, Deputy.

Marshal's Fees:

20 Spas. in chancery, - -	$40 00
20 Injunctions, - - -	40 00
Expenses, in lieu of mileage, -	11 75
	$91 75

(14) UNITED STATES OF AMERICA, }
District of West Virginia, } *ss:*

IN THE UNITED STATES DISTRICT COURT IN AND FOR SAID DISTRICT.

————————Division.

ADJUDICATION OF BANKRUPTCY.

In the Matter of Dever Pickens, Bankrupt. } No. 69. In Bankruptcy.

At Clarksburg, in said district, on the 30th day of

October, A. D., 1899, before the Honorable John J. Jackson, Judge of said Court in Bankruptcy, the petition of Dever Pickens that he be adjudged a bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said Dever Pickens is hereby declared an adjudged bankrupt accordingly.

Witness the Honorable John J. Jackson, Judge of the said Court, and the seal thereof, at Clarksburg, in the said District, on the 30th day of October, A. D., 1899.

Attest:

(Signed) JASPER Y. MOORE,
[Seal of Court.] Clerk D. C. U. S., D. W. Va.

A copy—Teste:

(Signed) JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

ORDER OF REFERENCE.

(15) IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

In the Matter of Dever Pickens, Bankrupt. } No. 69. In Bankruptcy.

Whereas, Dever Pickens, in the county of Barbour, and district aforesaid, on the 30th day of October, A. D., 1899, was duly adjudged a bankrupt upon a petition filed in this court by him on the 27th day of October, A. D., 1899, according to the provisions of the acts of Congress relating to bankruptcy.

It is, thereupon, ordered that said matter be referred to Harvey W. Harmer, one of the referees in bankruptcy of this court, to take such further proceedings therein as are required by said acts; and that the said Dever Pickens shall attend before said referee on the 18th day of November, A. D., 1899, at 10 o'clock, A. M., and thenceforth shall submit to such orders as may be made by said referee or by this court relating to said bankruptcy.

Seal of Court. Witness the Honorable John J. Jackson, Judge of the said Court, and the seal thereof, at Clarksburg, in said District, on the 30th day of October, A. D., 1899.

(Signed) JASPER Y. MOORE,
Clerk D. C. U. S. D. W. Va.

A Copy—Test:

(Signed) JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE
(16) DISTRICT OF WEST VIRGINIA.

In the Matter of
Dever Pickens,
Bankrupt. } In Bankruptcy.

At Clarksburg in said district on the 18th day of November, A. D. 1899, before Harvey W. Harmer, referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors under the said bankruptcy and of which due notice has been given in the Barbour Democrat, a newspaper published in said district, and by notice mailed to each of the creditors of said bankrupt, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of trustee under the said bankruptcy; and I do hereby certify that the creditors of said bankrupt, who were present or duly represented, failed to make a choice of a trustee of said bankrupt's estate; and therefore I do hereby appoint Henry Haymond, of Clarksburg, in the county of Harrison and State of West Virginia, as trustee of the same.

And on motion of Susan C. Dent and John D. Pickens, creditors of said bankrupt, this meeting of creditors is adjourned and continued until the 20th day of November, 1899, for the purpose of receiving proof of claims herein.

(Signed) HARVEY W. HARMER,
Referee in Bankruptcy.

A copy—Attest:
(Signed) HARVEY W. HARMER,
Referee.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE
(17) DISTRICT OF WEST VIRGINIA.

In the Matter of
Dever Pickens,
Bankrupt. } In Bankruptcy.

At Clarksburg, in said district, on the 20th day of November, 1899, before Harvey W. Harmer, referee in bankruptcy.

This being the day to which the first meeting of the creditors herein was adjourned on the 18th day of November, 1899, for the purpose of receiving proof of claims.

And Susan C. Dent, a creditor of said bankrupt, appeared by her attorney, Edwin Maxwell, and, without waiv-

ing her preference, tendered her proof herein claiming to be a preferred creditor of said bankrupt in the sum of $9,000.00, the amount of a judgment rendered in the Circuit Court of Barbour county, West Virginia, on the 27th day of February, 1892, with interest thereon and $971.34 costs and $231.85 costs in the Supreme Court of Appeals of West Virginia, to the filing of which and its allowance as a preferred claim against said bankrupt estate John D. Pickens, executor of James Pickens and Ann M. Pickens, creditors of said bankrupt by their attorney, John Bassell, objected and excepted.

And the matters herein being considered by the referee he doth allow said claim to be filed and allowed the same as one of the preferred claims against said bankrupt's estate, but without in any way fixing the order of its preference until such time as a distribution of the assets of the said bankrupt is hereafter ordered.

(18) And this meeting of the creditors of the said bankrupt is again adjourned and continued until the 9th day of March, 1900, at which time the said creditors will meet at the office of the referee, in Clarksburg, to prove their claims.

(Signed) HARVEY W. HARMER,
Referee in Bankruptcy.

A copy—Attest:

(Signed) HARVEY W. HARMER,
Referee.

(19) IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

In the Matter of Dever Pickens, Bankrupt.	}	In Bankruptcy.

At Clarksburg on the 9th day of March, 1900, before Harvey W. Harmer, referee in bankruptcy.

This being the day to which the meeting of creditors held herein on the 20th day of November, 1899, adjourned and continued.

John D. Pickens, a creditor of said bankrupt, in his own right as well as executor of James Pickens and executor of Ann Maria Pickens, appeared and, reserving the right to at any time hereafter withdraw his proof of debts filed herein and with the right to proceed in any other way desired, should it be held that by so proving debts that

the liens claimed in the bankrupt's estate should be relinquished by proving same at this time, and tendered his proof of debts herein, claiming to be a preferred creditor of the said bankrupt, as follows: John D. Pickens, of Quiet Dell, in his own right, in the sum of $1,320.80, with interest from January 3, 1888; John D. Pickens, of Quiet Dell, executor of James Pickens, in the sum of $2,000.00, with interest on $666.66 from January 22, 1888, with interest on like sum from January 22, 1889, and interest on like sum from January 22, 1900; John D. Pickens, of Quiet Dell, executor of Ann Maria Pickens, in the sum of $4,639.00, with interest on $2,500.00 from October 1, 1887, and on $2,139.00 thereof from June 2, 1889, with a credit thereon of $150.00 as of October 1, 1888, being interest for one year.

(20) And the matters herein being considered by the referee, he does allow said three claims to be filed, and allows the same as preferred claims against said bankrupt estate, but without in any way fixing the order of their preference until such time as the distribution of the assets of the said bankrupt is hereafter ordered or until all the claims of the said bankrupt are presented and allowed.

(Signed.) HARVEY W. HARMER,
Referee in Bankruptcy.

A Copy Attest:

(Signed.) HARVEY W. HARMER,
Referee.

(21) STATE OF WEST VIRGINIA:

At a Circuit Court held for the county of Barbour, at the court-house thereof, on the 2nd day of November, 1899, the following order was entered:

Susan C. Dent
vs.
Dever Pickens, &c. } In Chancery.

This day came the defendant, Dever Pickens, and tendered and asked leave to file his separate supplementary answer to the bill and amended bills of the plaintiff, which leave is given, and the said answer is accordingly filed.

A true copy from the record.

Attest:

(Signed.) R. E. TALBOTT, Clerk.

(22) To the Hon. John H. Holt, Judge, &c.:

The supplementary answer of Dever Pickens to the bills and amended bills in chancery exhibited against him and others in the Circuit Court of Barbour county, within the Third Judicial Circuit, by Susan C. Dent.

This respondent, without further answering said bills so exhibited against him, says that since the institution of this suit and since the last term and continuance thereof, to-wit: on Friday, the 27th day of October, 1899, he, the said Dever Pickens, upon a petition filed in the United States District Court for the District of the State of West Virginia, on that day was adjudged a bankrupt, whereby and by reason whereof all the property interests, rights, estate, passed under the control and jurisdiction of said court in bankruptcy, and under the law can be alone administered and disposed of by its order.

Respondent, therefore, now here insists that this court ought not and cannot legally further proceed against him in this proceeding, and that all further action by this court should cease until said bankruptcy proceeding shall have been finally heard and determined, and said respondent asks that such action be taken by this court.

(Signed) DEVER PICKENS,
Per Attys.

DAVIS & DAYTON, Attys.

THE STATE OF WEST VIRGINIA, }
County of Barbour, } to-wit:

Dever Pickens, the respondent named in the foregoing answer, being first duly sworn, says that the facts and allegations therein contained are true, except so far as therein stated to be made upon information, and so far as therein stated to be made upon information he believes them to be true.

(Sgd.) DEVER PICKENS.

(23) Taken, sworn to and subscribed before me this 28th day of Oct., 1899.

G. R. CLEAVENGER, N. P.

STATE OF WEST VIRGINIA, }
County of Barbour, } to-wit:

I, Richard E. Talbott, clerk of the Circuit Court of said county, do certify that the foregoing is a true copy of the supplementary answer of Dever Pickens filed in the chancery cause of Susan C. Dent *vs.* Dever Pickens &c., pending in said court.

Given under my hand this 28th day of March, 1900.

(Signed) RICHARD E. TALBOTT, Clerk.

(24) To the Judge of the Circuit Court of Barbour County:

Your petitioner, Henry Haymond, respectfully represents and shows unto your Honor that Dever Pickens was, by an order of the District Court of the United States for the District of West Virginia, entered on the 30th day of October, 1899, duly adjudged a bankrupt upon a petition filed by him in said court; that the matters arising upon said petition were, by an order of the said court entered on said date, referred to Harvey W. Harmer, one of the referees in bankruptcy of said court.

Your petitioner further represents that the said Harmer, as such referee, caused notices to be given to the creditors *to* said bankrupt, according to law, calling a meeting of said creditors at his office in Clarksburg, West Virginia, for the purpose of electing a trustee, taking proof of debts, examining the bankrupt, and transacting such other business as may properly come before said meeting; that at said meeting your petitioner was duly appointed as the trustee of the estate of said bankrupt, as will more fully appear by a duly certified copy of the said order of appointment now here filed as Exhibit "Appointment."

Your petitioner further represents that in as much as all the creditors named in the schedule of said bankrupt have not appeared before the said referee and filed proof of their debts against said bankrupt, that the said referee has made no further order directing the trustee to take charge of and sell the assets, consisting of real and personal estate belonging to said bankrupt, and that your petitioner has not taken any steps towards a sale of the assets of the said bankrupt.

Your petitioner further represents that Susan C. Dent, (25) one of the creditors of said bankrupt, instituted her suit on the chancery side of the Circuit Court of said Barbour county on the 24th day of January, 1889, against the said Dever Pickens, as your petitioner is informed and believes, and that a decree was entered therein and said cause appealed to the Supreme Court of Appeals of West Virginia, and that the said decree was reversed and remanded to the said Circuit Court with specific instructions governing the former decrees to be entered therein by the said Circuit Court; that the said court has not yet, as petitioner is informed and believed, complied with said instructions and directions committing said cause to one of the commissioners of said court, and that said commissioner has

not yet filed his report therein, and that the same is now ready to be acted upon by the said court.

Your petitioner further represents that inasmuch as the said chancery cause was pending in said circuit court for sometime prior to the passage of the bankrupt law of 1898, and that inasmuch as the liens and priorities upon the real estate of the said Pickens can now be ascertained by the said commissioner, that it would be to the best interest of the creditors of said bankrupt, and much less expense, for the said Circuit Court to proceed with the enforcement of the liens against said bankrupt's estate, as though no petition had been filed in bankruptcy by the said Pickens, and no proceedings had by the said Court of Bankruptcy.

Your petitioner, therefore, prays that he be made a party to the said cause in the said Circuit Court, and that this petition be treated and held as his answer thereto, and that the said Circuit Court proceed to the enforcement of the liens against the estate of the said Dever Pickens, bankrupt.

(26) (Signed) HENRY HAYMOND,

Trustee of the estate of Dever Pickens, a bankrupt.

E. MAXWELL,

Counsel for Trustee, &c.

STATE OF WEST VIRGINIA, }
County of Harrison, } To-wit:

Henry Haymond, trustee, the defendant named in the foregoing petition or answer, being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and and that so far as they are therein stated to be on information he believes them to be true.

(Signed) HENRY HAYMOND.

Taken, sworn to and subscribed before me this the 10th day of February, 1900.

A. S. LONG, Notary Public.

I, R. E. Talbott, Clerk of the Circuit Court of Barbour county, West Virginia, do certify that the foregoing is a true copy of the petition of Henry Haymond, Trustee, &c., filed in the chancery cause of Susan C. Dent *vs.* Dever Pickens, &c., pending in said Circuit Court at the February term thereof, 1900.

Given under my hand this 12th day of March, 1900.

R. E. TALBOTT, Clerk.

(27) STATE OF WEST VIRGINIA }

At a Circuit Court held for the County of Barbour at the court-house thereof, on the 23rd day of February, 1900.

Susan C. Dent, Plaintiff, *vs.* Dever Pickens &c., Defendants.	In Chancery.

This cause came on this day to be heard upon the record herein, and upon the mandate and opinions of the Supreme Court of Appeals, both upon the original and rehearing hearings, entered in the said court April 15th, 1899, and in this court May 20th, 1899, papers heretofore read, former orders and decrees, upon the *scire facias* sued out and returned duly executed at Rules, and revived against the executor of the defendant, Ann M. Pickens whose death was herein hertofore at the May term, 1899 of this court, suggested; upon the petition of Henry Haymond, trustee in bankruptcy, of the defendant, Dever Pickens, now here filed praying to be made a party hereto, which is accordingly so ordered, and requesting this court, notwithstanding proceedings pending in bankruptcy against the defendant Dever Pickens, to proceed with this cause in this court to final hearing, general replication to the answer suggesting said bankruptcy, filed by said defendant, Dever Pickens, at the October term 1899, of this court, and was argued by counsel.

And the court now proceeding to enter a deree herein in accordance with said opinions, doth adjudge, order and decree, that the deed of trust in the original and two amended bills in said cause mentioned, executed by the defendant, Dever Pickens, to the defendants, John J. Davis and A. G. Dayton, trustees, dated the 14th day of Janu-
(28) ary, 1889, is, except as to the debt of the defendant, Ann M. Pickens, therein for $2,500.00, subject to a credit of $150.00, as of Oct. 1st, 1887, fraudulent and void as to the plaintiff's judgment; and that the marriage contract entered into between said defendant, Dever Pickens and the defendant, Minnie B. Coburn, dated the 10th day of May, 1889, is, as to the debts therein assailed in plaintiff's amended bills, also fraudulent and void as to the plaintiff's judgment. It is, therefore, adjudged, ordered and decreed that said trust and contract be, and the same are hereby, set aside to the extent aforesaid.

And it appearing to the court that the real estate conveyed in said trust consisted of three tracts, as follows:

One tract containing 86 acres and 133 poles purchased on the 8th day of March, 1887, by said Dever Pickens from Alston G. Dayton, special commissioner in the chancery cause of Byron Love and wife *vs.* M. W. Coburn, &c.; another tract containing 88½ acres, adjoining said first named tract, purchased by said Dever Pickens from S. V. Woods, special commissioner in the chancery cause of W. W. Daniels, &c., executors, &c. *vs.* M. W. Coburn, &c., and another tract containing 396½ acres on Arnold's Run, a tributary of Elk creek in Barbour county, being the home farm of one James Pickens, devised by him to said Dever Pickens by his last will and testament, and particularly described by metes and bounds therein, which is probated and of record in said county; and it further appearing to the court from an inspection of the record of said two named causes that the land therein mentioned has been sold from said Dever Pickens by said commissioners in judicial proceedings for the purchase money and surplus proceeds of sale arising therefrom belonging to said Dever Pickens have been collected by them and paid to Squire Crouso, late general receiver of this court, under orders entered at the October term of said court 1890, in the Chancery cause of A. G. Dayton, special (29) commissioner, *vs.* Dever Pickens, &c., and at the February term of said court, 1892, in the chancery cause of Franklin Maxwell *vs.* A. W. Martin &c., where the same remain, subject to the order of this court herein, disposition thereof is made as hereinafter ordered; and it further appearing to the court that said last-named tract of 396½ acres, is in the possession of, and owned by, said Minnie B. Coburn, now Minnie B. Pickens, the wife of said Dever Pickens, under said contract, subject to the judgment of the plaintiff herein, and that the same, and the surplus belonging to said Dever Pickens arising from the sale of said two first-named tracts, as appear by the allegations of said amended bills which are undenied, are insufficient for the satisfaction of the plaintiff's judgment, and that a sequestration of the rents and profits, and also a sale of said last-named tract, as prayed for in said amended bills, will be necessary in addition to the other relief prayed for and decreed herein, to satisfy the same, together with the plaintiff's costs and the expenses of said sequestration and sale, disposition is made thereof as hereinafter ordered.

And it further appearing to the court that by the institution of the plaintiff's suit herein, to-wit: as of the date thereof, January 24th, 1889, she acquired a lien upon said three tracts of land, superior to the lien of said trust cre-

ated thereby in favor of the debts therein assailed herein, except as to the said Ann M. Pickens $2,500.00 debt, and that by reason of the filing of said first amended bill herein, to-wit: on the first Monday in September, 1889, to-wit: the 2nd day of September, 1889, she acquired a lien upon all the debts transferred by said Dever Pickens to said Minnie B. Coburn in said contract, to-wit: the residue of a debt due said Dever Pickens from M. W. Coburn and Ledrue Coburn, secured by deed of trust to Alston G. Dayton and James Pickens, trustees, dated December 21st, 1885, after deducting therefrom $1,000.00 pretended to (30) have been assigned January 14th, 1889, to the defendant Mollie Pickens, a note executed to said Dever Pickens by the defendant A. S. Pickens, on the 9th day of August, 1898, for $300 dollars, due on demand; another note executed to said Dever Pickens by said A. S. Pickens, on the 18th day of June, 1889, and due one day after date for $35.00; a note executed to said Dever Pickens, by the defendant M. S. Clevenger, on the 17th day of September, 1888, for $146.50, due one day after date; a note executed to said Dever Pickens, by the defendant, Mollie Pickens, on the 9th day of February, 1889, for $150.00, due one day after date; a note executed to said Dever Pickens by one A. H. Young, on the 15th day of February, 1889, for $410.00, payable one day after date; a note executed to said Dever Pickens by the defendant, Emma Walker, for $36.00, payable one day after date; a note executed to said Dever Pickens by the defendant, John D. Pickens, upon the 1st day of May, 1889, for $500.00, payable on the expiration of the term of a lease made to said John D. Pickens as lessee, should he occupy for the full time without interuption, and a note executed to said Dever Pickens by said John D. Pickens, on the 25th day of April, 1889, for $20.00, due on demand—order is made in respect thereto as hereinafter mentioned; and it further appearing to the court that said pretended assignment to said defendant, Mollie Pickens, is assailed as fictitious and fraudulent in plaintiff's second amended bill, and that the $1,000.00 therein assigned was in fraud of the plaintiff's rights in the premises, and if not paid, is bound by the lien of plaintiff's execution, issued upon said judgment on the 21st day of February, 1893, and received by the sheriff on the next day to be executed, and docketed in the clerk's office of the county court of said county, on the 3rd day of March following, and if paid is liable to be charged against her personally; disposition is made in respect thereto, and as to (31) said debts, as hereinafter ordered.

And if further appearing to the court from the records of this cause, and the original opinion of said Supreme Court herein, that there is of said debt in said contract mentioned, due to said Denver Pickens from said M. W. Coburn and Ledrue Coburn under the deed of trust therein mentioned, executed by them to the defendant, Alston G. Dayton and said James Pickens, trustees, dated September 21st, 1885, in the hands of said A. G. Dayton, attorney, paid to him by Melville Peck, special commissioner in the chancery cause of Franklin Maxwell *vs.* M. W. Coburn &c., & J. N. B. Crim *vs.* M. W. Coburn, &c., the sum of $1,721.22, as appears by his receipt to said special commissioner, dated April 22nd, 1892, and that the residue thereof, to-wit, $886.84, with interest thereon from the 22nd day of May, 1893, is in the hands of said general receiver in said first named cause aforesaid, disposition is made thereof as is hereinafter provided.

And it further appearing to the court that the judgment of the plaintiff, hereinbefore mentioned, was recovered against the defendant Denver Dickens, in the Circuit Court of said county on the 1st day of March, 1892, for the sum of $9,000.00, and interest thereon from the 27th day of February, 1892, and $971.34 costs, which costs are subject to a credit of $214.55 costs (recovered by the defendant, Dever Pickens, against the plaintiff upon a reversal of the first judgment recovered by plaintiff at law upon her cause of action against the defendant, Denver Pickens, mentioned in the plaintiff's second amended bill) which said judgment for $9,000.00, with interest as aforesaid, and $971.34 costs, subject to said credit of $214.55, aggregate on this 12th day of February, 1900, the sum of $14,054 29; it is further adjudged, *order* and decreed that said defendant do pay to the plaintiff, Susan C. Dent, said aggregate sum of $14,-(32) 054.29, with interest upon said aggregate from said 12th day of February, 1900, until paid; and that said Dever Pickens, Mollie Pickens, R. M. Boring and Minnie D. Pickens, out of their personal estates, and the defendant, John D. Pickens, executor of said James Pickens, out of the estate of his testator in his hands to be administered, (the said defendants being the defendants answering herein, except said Ann M. Pickens, who *was* departed this life, and said Mollie Pickens, whose pretended assignment was successfully assailed herein) do pay to the plaintiff her costs by her herein in this court and the said Supreme Court of Appeals, as taxed by the clerk thereof upon said mandate, expended, for the collection whereof leave is given the plaintiff to sue out execution against said Denver Pickens for said decree herein for said sum of $14,054.29,

with interest thereon from said 12th day of February, 1900, until paid, and against said defendants, Dever Pickens, Mollie Pickens, R. M. Boring and Minnie B. Pickens, out of their personal estates for the plaintiff's costs herein, and in said Supreme Court of Appeals, and against said John D. Pickens, executor of said James Pickens, out of the estate of his testator in his hands to be administered, severally according to law.

And it further appearing to the court from the record herein that said defendant, Dever Pickens, by the consumation of said contract and marriage thereunder to the defendant, Minnie B. Coburn, had issue of two children, still living, and thereby enlarged the devise of said James Pickens to him of said 396¼ or 396⅜ acres in said will mentioned into an estate in fee simple, possible defeasible, and which is liable to be sold for the satisfaction of the plaintiffs decree herein, it is further adjudged, ordered and decreed, that unless the plaintiff's decree and costs herein, and in said Supreme Court of Appeals, shall be paid to her within thirty days from the adjournment (33) of this court, it shall be the duty of J. Hop Woods, who is hereby appointed as special commissioner for the purpose, to sell said land so devised to the defendant, Dever Pickens, in whole or in parcels, as he shall deem best, subject to said trust lien in favor of said Ann M. Pickens, for said $2,500.00, with interest thereon from October the 1st, 1887, subject to said credit of $150.00 thereon as of Oct 1, 1887, and any other credits due thereon, if any, free from the dower right of said Ann M. Pickens therein, she having departed this life since said mandate and opinions were entered in said Supreme Court of Appeals; and said commissioner may for that purpose cause the said land to be surveyed or partitioned, the costs and expenses whereof shall be taxed as part of the expenses attending said sale; and said commissioner shall sell said land at public auction, at the front door of the Courthouse of said county, on some court day therefor, to the highest responsible bidder, either in whole or in parcels, as surveyed or partitioned, as he may deem best, for ⅓ cash in hand and the residue upon a credit of one, two and three years, the purchaser or purchasers executing bonds, bearing interest from the day of sale, with good personal security, for the deferred payments; and before making said sale said commissioner shall advertise the said land, giving a general description thereof, with the time, terms and place of sale, for the period of four successive weeks in some weekly newspaper published in said county, and post a copy of the advertisement at the front

door of the Courthouse thereof, for the like period; and before receiving any money from said sale, said commissioner shall execute before the clerk of this court, with security to be approved by him, a bond in the penalty of $1,000.00, conditioned according to law, and file the same for record, and make a report of his proceedings hereunder to this court for further decree herein.

And it further appearing to the court that a seques-
(34) tration of the rents and profits of said land is necessary herein as hereinbefore mentioned, and that the same is prayed for in plaintiff's said amended bills, it is further adjudged, ordered and decreed, that said J. Hop Woods, who is hereby appointed a Special Receiver for the purpose, do take possession of said land under a writ of possession which is now here awarded him at the plaintiff's costs, to be hereafter taxed and recovered of the defendant, Dever Pickens, and after twenty days advertisement thereof, after the adjournment of this court, in some weekly newspaper published in said county, giving a general description of the land, together with the time, terms and place of renting the same, rent the said land at public auction, at the front door of the Courthouse of said county, to the highest responsible bidder, for cash, until the 30th day of October, 1900; and said Special Receiver may also advertise the said renting by printed posters, posted at the front door of said Courthouse and in the neighborhood of said land, for said twenty days, the costs whereof and of said advertisement, together with the expenses attending the renting, together with lawful commission to said receiver, shall be taxed against the said defendant, Dever Pickens, as the costs thereof; and before receiving any money therefrom said special receiver shall also execute before said clerk another bond in the penalty of $1,000.000, with security to be approved by him, and conditioned for the payment of any money arising from said rent as the court shall herein order, and file the same for record and make a report of his proceedings hereunder to this court for further decree herein; and said special receiver before delivering possession of the land herein ordered to be rented to any renter shall, in addition to the cash payment aforesaid required of him therefor, require him to execute to said special receiver a written lease or covenant, with personal security to be approved by said special receiver, conditioned for the payment of all such damages as shall be sustained
(35) to said land, natural use and occupation, the wear and tear excepted, during said lease, in case the same shall not be surrendered to said special receiver at the termination thereof in the same condition as the same now is, and

that none of the meadow or pasture land shall be plowed or injured, or any valuable timber sold or destroyed.

And the court, now proceeding to refer this cause to a commissioner of this court to report upon the matters ordered in the original opinion of said Supreme Court of Appeals, it is further adjudged, ordered and decreed that the same be referred to George M. Kittle, a commissioner of this court, who is directed to ascertain and report what moneys due on the claims or debts assigned by the defendant, Dever Pickens, in the said marriage contract, dated May the 10th, 1889, if any, have been paid by the debtors therein since the date of the filing of plaintiff's first amended bill herein, to-wit: on said first Monday in September, 1889, to-wit: said 2nd day of September, 1889, or the date of the process previously issued thereon, to-wit: August the 31st, 1889, and if so, by whom, and to whom, and when the same were paid; and, also, to ascertain and report whether the $1,000.00 of the debt secured by said trust deed made by said M. W. Coburn and Ledrue Coburn to the defendant, Alston G. Dayton and said James Pickens, trustees, dated December 21st, 1885, and mentioned in said marriage contract as having been assigned by the defendant, Dever Pickens (the assignment whereof was successfully assailed, as aforesaid, by said plaintiff's second amended bill) has been paid to said Mollie Pickens since the filing of said first amended bill, or the issuance of process thereon as aforesaid, and if so, by whom, and when paid, and said commissioners shall also ascertain and report what part, if any, of the residue of said debt secured by said trust to said defendant, Dever Pickens, paid to the defendant, A. G. Dayton, attorney, on the 22nd day of April, 1892, by said Melville Peck, special commis-
(36) sioner, as appears by the receipt of said A. G. Dayton, attorney, to said Melville Peck, special receiver, dated April 22nd, 1892, for $1,721.22, has been paid by said attorney, and if so, to whom, and when the same was paid; and, also, to ascertain and report for whom the said A. G. Dayton was attorney in respect to said $1,721.22, also what fund, if any, other than that hereinbefore mentioned, is in the hands of said late general receiver belonging to the defendant, Dever Pickens, which is liable to the plaintiff's claim, and the amount thereof, and whence derived-and make a report of his proceedings under this order to this court for a further decree herein. But before executing this order said commissioner shall give notice to the parties, naming them, except said Ann M. Pickens, now deceased, named as defendants to said original and amended bills, of the time and place of executing this order by

publication in some weekly newspaper published in said county, and posted at the front door of the court-house thereof, for four successive weeks prior thereto, which publishing and posting shall be equivalent to personal service upon the parties, or any of them.

And it is further adjudged, ordered and decreed, in obedience to said original opinion of said Supreme Court of Appeals, that said Squire Crouso, late general receiver of the Circuit Court of said county, do pay over to the plaintiff the said sum of $886.84, with interest thereon from the 22nd day of May, 1893, so ascertained as aforesaid to be in his hands as parcel of the said trust debt due to said Dever Pickens from said M. W. Coburn and Ledrue Coburn, under their said trust of December the 21st, 1885, paid to him under said decree entered at the February term of said court, 1892, in said chancery cause of Franklin Maxwell *vs.* A. W. Martin, &c., which said sum shall (37) be paid by said receiver less 5 per cent. commission to be retained by him, together with any taxes and charges properly chargeable thereon, which said payment, when made, shall be a credit upon the plaintiff's decree herein for $14,054.29, with interest from Feb. 12, 1900, and for which the plaintiff shall execute to said general receiver duplicate receipts, one of which he shall retain and the other he shall deliver to the clerk of this court to be endorsed and filed by him with the papers in this cause.

And this cause is continued.

A true copy from the record.

Attest:

(Signed) R. E. TALBOTT, Clerk.

DECREE.

(38) IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Dever Pickens
vs.
Susan C. Dent &c. } In Chy. In Equity.

On this, the 31st day of March, 1900, Dever Pickens by Jno. W. Davis, his counsel, presented to the court his bill of complaint against Susan C. Dent and others, defendants named in said bill, praying the court to restrain Susan C. Dent, and each of the parties named in said bill, from further prosecuting a suit now pending in the Circuit Court of Barbour county, on the chancery side of said court against said Dever Pickens, & to restrain the said J. Hop.

Woods, special commissioner & receiver, from proceeding to rent or sell the real estate of the said Dever Pickens under the decree entered in said cause.

Upon consideration whereof, as it appears from the allegations of the bill that the proceedings in said suit are still pending and undetermined in the said Circuit Court of Barbour county between the plaintiff, the bankrupt in this cause, and the defendants named therein, an injunction is allowed restraining and inhibiting the said Susan C. Dent, and all other defendants named in the bill, who are interested in the pending suit in the Circuit Court of Barbour county, from further prosecuting said suit until the further order of this court. And it is further ordered that J. Hop. Woods, special receiver and special commissioner, be enjoined and restrained from renting or making sale of said property under the decree of said court until the further order of this court.

(Signed) "JACKSON, Judge.
"March 31st, 1900."

NOTICE.

(39) To Dever Pickens:

You will please take notice that on Monday, the 16th day of April, 1900, at Clarksburg, in Harrison county, West Virginia, I will move the United States District Court for the District of West Virginia to dissolve the injunction awarded you by the Honorable John J. Jackson, Judge of said court, in vacation, on the 31st day of March, 1900, in a certain suit in equity now pending in said court, wherein you are complainant and myself and others are defendants.

Given under my hand this 4th day of April, 1900.

SUSAN C. DENT,
By Counsel.

J. HOP. WOODS and
EDWIN MAXWELL,
Of Counsel for Susan C. Dent.

I executed the within written notice on Dever Pickens on April 5th, 1900, by delivering to him in person a copy thereof.

(Signed) T. O. MARTIN.

Subscribed, sworn to and acknowledged before me this 9th day of April, 1900.

(Signed) E. M. KAYSER,
N. P. for Barbour county, W. Va.

ORDER.

(40) CLERK'S OFFICE, UNITED STATES DISTRICT COURT, DISTRICT OF WEST VIRGINIA.

Dever Pickens
vs.
Susan C. Dent et al. } In Equity.

This day came J. Hop. Woods, special commissioner and special receiver, and Susan C. Dent, and Henry Haymond, trustee, and filed their several answers to the bill heretofore filed in this case, and by consent this cause is set down for hearing before the Judge of this court at Parkersburg, in this District, on the 27th day of April, 1900, at 11 o'clock A. M.

ANSWER OF J. HOP WOODS SPECIAL COM'R AND SPECIAL RECEIVER.

(41) To the Honorable John J. Jackson, Judge of the District Court of the United States for the District of West Virginia.

The separate answer of J. Hop. Woods, Special Commissioner and Special Receiver in the Chancery Cause of Susan C. Dent *vs.* Dever Pickens, &c., in the Circuit Court of Barbour county, West Virginia, to the bill filed in said District Court against said Susan C. Dent, himself and others, by said Dever Pickens.

For answer to so much of said bill as related to respondent, he says that he admits the allegation thereof that he was appointed special commissioner in said cause to make sale of the tract of 396¾ acres therein decreed to be sold as the land of said Dever Pickens, and that he was also appointed therein special receiver to rent the same and that he was proceeding to carry the latter order in said decree into execution on the 2nd day of April, 1900, when he was served with a notice of this suit and the injunction awarded therein, whereupon he suspended the execution of said order and continued the notice of said renting until the 25th day of April, 1900, and submits himself in his capacity both as said special commissioner and special receiver to the jurisdiction of this court—if this court have jurisdiction thereof.

Further answering respondent says that he has no authority either as special commissioner or as special receiver of said Circuit Court except that given him by the decree of sale entered therein in said cause and herein by the plaintiff complained of, and that while he had taken no

steps, and was not contemplating any immediate steps towards executing the decree of sale of said land, yet nevertheless, he had full authority to do so, but that all his action in respect either to the renting or sale of said land are (42) subject to the approval or disapproval, and must be reported to said Circuit Court, and that no disbursement of any funds arising therefrom has been made or could be made in said cause without the order of said court; and so respondent says that the allegation of said bill that respondent will disburse the said proceeds without reference to the bankruptcy proceedings instituted by the plaintiff as set out in said bill, or that the said funds would be paid to the creditor before said Circuit Court whether the same had been proved in said bankruptcy proceedings or not, as said bill alleges, is not true, as respondent can only act under and through the orders of said Circuit Court before whom both the said bankrupt and his trustee, the defendant Henry Haymond, are parties.

Further answering respondent says that he has no authority to defend this suit, or any other, without the order of said Circuit Court, and no funds to pay the costs thereof, and that his functions are limited by the orders and jurisdiction of said Circuit Court. Respondent, therefore, denies the right of plaintiff to sue him, or make him a defendant in this court, and he denies the jurisdiction of this court over him by reason of anything alleged in plaintiff's bill—nevertheless, he submits thereto, as before stated, until the said question of jurisdiction is considered by this court.

And having fully answered, respondent prays to be hence dismissed with his costs.

(Signed) J. HOP. WOODS,
Spl. Com'r and Spl. Rec'r,
Respondent.

EDWIN MAXWELL,
Att'y for Respondent.

STATE OF WEST VIRGINIA, }
(43) Barbour County, } to-wit:

J. Hop. Woods, Special Commissioner and Special Receiver, the respondent named in the foregoing answer, being duly sworn says, that the fact and allegations contained therein are true, except so far as they are therein stated to be on information, and that so far as they are therein stated upon information, he believes them to be true.

(Signed) J. HOP. WOODS,
Respondent.

Taken, sworn to and subscribed before me this 13th day of April, 1900.

(Signed) F. S. BYREN, N. P.

ANSWER OF SUSAN C. DENT.

(44) To the Honorable John J. Jackson, Judge of the District Court of the United States for the District of West Virginia.

The separate answer of Susan C. Dent to the bill of complaint filed against her and others in this court by Denver Pickens, complainant.

For legal answer to said bill, this respondent says that the same is insufficient in law, and that this court has not jurisdiction to entertain the same by reason of any of the matters alleged therein against respondent or any of her co-defendants; and respondent now therefore here enters her formal demurrer to said bill upon which she relies, and in person denies the jurisdiction of said court to entertain the said bill.

Nevertheless, without in any manner waiving the benefit of her said demurrer and plea to the jurisdiction, for answer to the allegations of fact contained in said bill, or to such parts thereof as it is material for her, as she is advised to answer unto, she answers and says, that she admits, as is alleged in said bill, that on the 30th day of October, 1899, plaintiff was adjudged a bankrupt in said court before Harvey W. Harmer, a referee in bankruptcy, but respondent denies the allegation of said bill that said plaintiff is indebted to Rachael M. Boring in the sum of $1,320.80, to the executors of James Pickens, deceased, in the sums of $4,579.88 and $2,000.00, and neither admits nor denies the allegation therein that plaintiff is indebted to Joseph N. B Crim in the sum of $35.00, to Samuel J. Heatherly in the sum of $200.00, and to Mollie Pickens Martin, formerly Mollie Pickens, in the sum of $1,000.00, but admits the allegation of said bill that plaintiff is indebted to respondent in the sum of $10,000.00, more or less, the true amount whereof is about $15,000.00

(45) Further answering, respondent says that she admits the allegation of said bill that her co-respondent, Henry Haymond, was selected as the trustee of plaintiff bankrupt, and that respondent, as said bill alleges, appeared by her attorney on the 20th day of November, 1899, before said referee and proved a claim against said bankrupt which consisted, as the bill avers, of a judgment for the sum of $9,000.00, rendered at law in her favor against

plaintiff in the Circuit Court of Barbour county, on the 27th day of February, 1892, and $971.34 costs, and the further sum of $231.85 costs, recovered by her in the Supreme Court of Appeals of West Virginia against plaintiff, which, as respondent avers, was for costs accruing to her in prosecuting from said Circuit Court to said Supreme Court an appeal from the final decree entered in the chancery cause hereinafter mentioned, dismissing respondent's bills therein, entered in said Circuit Court on the 17th day of November, 1896, which said cause afterwards pended and is still pending and undetermined upon said reversal in said Circuit Court; but respondent denies that said judgment, as is alleged in plaintiff's bill, is such a debt as would be released by the discharge of plaintiff in bankruptcy. On the contrary, respondent avers that said judgment arose out of a jury trial in said Circuit Court, had at the February term of said court, 1892, in an action of assumpsit brought by respondent against the plaintiff to recover damages for the breach of a promise by plaintiff to marry respondent, wherein, in aggravation of damages, it was proved that by reason of said promise plaintiff had seduced respondent, whereof a child was born, which as respondent avers, is still living, and of which plaintiff is the father, and which said promise plaintiff thence, thereafter, wholly failed to keep and perform, and has wholly failed to pay the said (46) judgment or any part thereof, but to pay the same has refused, and still refuses, to the great injury and damage of respondent. And so respondent says that the said debt being a debt predicated upon the breach of said promise is a judgment coming within the 17th section of the existing United States Bankrupt Law, under the second clause thereof, being a judgment in an action for a fraud, and wilful and malicious injury to the person of respondent, and is not affected by proceedings of plaintiff in bankruptcy, and will not be released should he be discharged thereunder.

Further answering, respondent says that it may be true, as stated in said bill, that her co-respondent, John D. Pickens, appeared before said referee on the 9th day of March, 1900, and proved against said plaintiff as a bankrupt said debt of $1,320.80, as the assignee of said Rachel M. Boring, and that he also as the executor of said James Pickens, deceased, proved said debt of $2,000.00, and also as the executor of Ann Mariah Pickens, deceased, proved a debt of $4,639.00, but if the same be true, respondent avers that said debt of $1,320.80, and $2,139.00, parcel of said debt of $4,639.00, were in controversy between plaintiff and respondent in said chancery suit, hereinafter mentioned,

and as between plaintiff and respondent therein directly assailed as to their validity and existence by respondent, and the same by said decree of reversal therein, by said Supreme Court, adjudicated to be fraudulent as to respondents said judgment, and that said debt of $2,000.00, was also in said suit (in which said John D. Pickens, as said executor of James Pickens, was a party and answered under oath, and also testified therein) indirectly in issue, and neither in the answer of said executor, or in his testimony, wherein he was defending against the allegation of the bill therein that a pretended debt of $5,000.00, due to the estate of his testator, James Pickens, as claimed, was fraud-
(47) ulent, did he claim or pretend that said $2,000.00 debt existed; and respondent says that in said decree of reversal said $5,000.00 debt was also held to be fraudulent as to respondent's said judgment, which said debt was in said suit claimed by said executor to be due from said bankrupt, who was his co-executor, on account of money collected and unaccounted for by him, whereas the record of said cause and the decree of said Supreme Court ascertained that he was actually in advance to the estate of his said testator, James Pickens. And so respondent says that said pretended debt of $2,000.00 was also in issue in said suit, and is adjudicated against the estate of said James Pickens.

Further answering, respondent says that it is not true, as stated in said bill, that any decree of sale had ever been entered in said cause prior to the filing of the petition of plaintiff in bankruptcy, or his adjudication as a bankrupt thereunder, and none was entered subsequently thereto, except the decree complained of in said bill, entered at the February term of said Circuit Court, 1900; and so respondent says that it is not true, as stated in said bill, that any decree of sale in said cause had ever been set aside by said Supreme Court of Appeals, or any decree therein set aside by said court, except said final decree of November 17th, 1896, in favor of plaintiff, which was reversed as aforesaid.

Further answering, respondent says that it is true, as alleged in said bill, that said plaintiff, after his adjudication as a bankrupt in this court, filed his answer in said Circuit Court setting up the said adjudication and praying that proceedings might be stayed in said Circuit Court pending such bankruptcy proceedings in this court; and respondent says that such proceedings were stayed until said February term, 1900, not because of the filing of said answer of plaintiff, upon which no issue was taken until said
(48) February term, but because of the death suggested upon the record of said Circuit Court of said Ann M. Pick-

ens, who was a defendant in said cause, and the terms necessary elapsing under the State statute before said cause could be revived and proceed against her said executor, the defendant, John D. Pickens; that, as respondent is advised, the effect of the existing United States Bankrupt Law and the proceedings of plaintiff thereunder was only to suspend the said suit in said Circuit Court until said 30th day of October, 1899, when said plaintiff was adjudged a bankrupt, and not to suspend the same further, without an order or injunction of this court; and respondent says that no order was made, or even injunction applied for, to further stay said cause, so far as respondent is advised; and so respondent says that said Circuit Court had full and complete jurisdiction to proceed to said decree of sale, and for other purposes complained of, and that if error existed therein to the prejudice of plaintiff, his remedy is by motion in said Circuit Court, or by appeal from said decree to said Supreme Court, where bond and security would be required of him, to preserve to respondent the benefit of said decree, if anything she is entitled to thereunder; and that plaintiff cannot collaterally attack or review the said decree in this court by an injunction awarded without bond, ousting the jurisdiction, and restraining its officers in the execution of said decree, as is sought to be done by the prayer of said bill

Further answering, respondent says that she knows nothing of the allegation of said bill in respect to the alleged fraudulent representations charged to have been made to said trustee of said bandkrupt, the defendant Henry Haymond, whereby the petition alleged to have been filed by him in said Circuit Court was procured, except what is stated in said bill; but respondent denied the averment in said bill that said trustee had no warrant of law to inter-
(49) vene in said suit and file his petition therein, though it may be true, and is immaterial if true, that he was not authorized or empowered by any order of this court to so intervene. On the contrary, respondent avers that under the 11th section of said Bankrupt Act, in clause b, the court may order a trustee to enter his appearance and defend any pending suit, and which, as respondent is advised, he may do without an order of court, or not do, if he thinks it best for the estate of the bankrupt, leaving the matter in the discretion of the trustee; but that under clause c of said section, if he desires to prosecute a suit commenced by the bankrupt prior to his adjudication, he must first have the approval of the court to do so. And so respondent says that it was the right and duty of said trustee, if he deemed it best for the estate of said bank-

rupt, to intervene in said suit, and respondent avers that it was best for the estate of said bankrupt for said trustee to so intervene, for the reason that it is the trustee's duty to collect the estate of the bankrupt, and that the effects of said bankrupt were in such a condition, by reason of the fraudulent transactions assailed in said suit, which had for their purpose, as ascertained by the decision of said Supreme Court, the secreting of his estate, that the discovery thereof could be best undertaken and prosecuted in said Circuit Court, in said suit, which was far advanced towards its final hearing in the discovery of said bankrupt's whole estate, and charging the same, as to a large part thereof, in the hands of his fraudulent assignees and vendees, who were parties to said suit (and not before said bankrupt court to be therein reached and dealt with as can be done said Circuit Court and decreed against) when plaintiff's bill was filed herein.

Further answering, respondent says that she knows nothing, as averred in said bill, as to the belief entertained by said trustee as to what was necessary for him to do in (50) respect to said suit, in order to bring, as therein averred, the real estate of plaintiff into this court; but asserts that the answer of the trustee itself is the best evidence of the purposes operating upon and controlling his action.

Further answering, respondent says that it is true, as averred in said bill, that under said decree complained of, respondent's co-defendant, J. Hop Wood, was appointed a special receiver to rent the real estate of the plaintiff, and that he was also appointed a special commissioner to sell the same, and that the cause was referred to one George M. Kittle, a commissioner of said Circuit Court; but it is not true, as in said bill alleged, that it was referred to him to ascertain and report the amount of the liens against said real estate. On the contrary, respondent avers that under the ruling of said Supreme Court of Appeals in the case of *Core vs. Cunningham*, &c., 27 West Virginia, 206, syllabus 5, a reference for such purpose would be error, and said cause was referred to said commissioner for the purpose of ascertaining under the direction and mandate of said Supreme Court of Appeals in said decree of reversal, See *Dent vs. Pickens* &c., 33 South Eastern Reporter, page 303, (46 West Virginia, not yet printed,) the personal estate of said plaintiff liable to the lien created by respondent's said suit and executions upon her said judgment, with the persons in possession thereof, or liable for the same.

Further answering, respondent says that it is true, as

alleged in said bill, that the petition of said trustee was filed in said suit at her instance, or more properly speaking, at the instance of her counsel therein, as she is advised, and it is also true, as averred in said bill, that respondent had, previous to the entry of said decree complained of, elected to prove her said debt before the referee in bankruptcy, one Harvey W. Harmer, before whom the same was pending; but it is not true, as therein averred, that such election estopped respond-
(51) ent from proceeding further in said cause in said Circuit Court, but, on the contrary, as respondent is advised, it was her duty to prove said debts, and to obtain whatever benefit she could obtain, if any, as to the payment thereof, in said bankruptcy proceedings; and respondent further denies the allegation of said bill, that it was the duty of said Circuit Court to stay further proceedings in said cause, in accordance with plaintiff's said answer therein, until the termination of said bankruptcy proceeding, and that the action of the said Circuit Court in rendering the decree complained of, was without warrant of law. On the contrary respondent avers, that it was the plain duty of said Circuit Court under the mandate and opinion, with the discretion given therein, of said Supreme Court of Appeals, in the absence of any restraining order, *pendente lite*, from this court enjoining the prosecution thereof, and asserting in this court under the bankrupt act, aforesaid, superior jurisdiction, to proceed with said cause.

Further answering respondent says that it is not true, as stated in said bill, and is immaterial in this court if true, that said Circuit Court did not finally determine the estate or interest of plaintiff in the tract of land in said decree complained of, directed and ordered to be sold, but, on the contrary the said decree ascertained the true estate of the plaintiff in said land, entitled as in said bill truly stated, as an "estate in fee simple, possibly defeasible," which is no more nor less than the estate asserted and alleged by said bill to be in said plaintiff as a "fee conditional," the said estate, as respondent avers, being an absolute estate in fee simple, devised to plaintiff by the will of his father, said James Pickens, deceased, liable to be defeated in the event of the death of the plaintiff without children, or the lawful issue of children living at the time
(52) of his death, or born within ten months thereafter. And respondent avers that it is shown by proof in said suit, and by the said decree complained of, that said plaintiff is married to one Minnie B. Coburn, the defendant named herein as Minnie Coburn Pickens, and by said mar-

riage had issue of two children, still living, which enlarged his estate under said will into the estate in fee simple, possibly defeasible, or conditional, as aforesaid.

Further answering respondent says that she denies the allegations of said bill that said decree complained of is erroneous or prejudicial to plaintiff by reason of the failure therein to ascertain the liens and charges upon said land, or because of the uncertainity of the estate described therein, or the failure to adjudicate the debts and liens thereon, or that said land cannot be sold to the best advantage under said decree, or that it can be sold to a better advantage under a decree in this court in bankruptcy ordering the same to be sold free of all expenses whatever and distributing the funds arising therefrom among the several creditors of plaintiff who shall prove their debts, as their respective rights may appear. And respondent further denies the allegation of said bill that in causing said decree to be entered in said Circuit Court, or in causing said petition to be filed therein by said trustee, respondent was acting for the sole purpose, or for any purpose, of preventing this court in bankruptcy from administering upon the estate of plaintiff, and adjudicating the several rights and priorities of plaintiff's various creditors, and that such action was fraudulent or without warrant of law, and was had for the purpose of defeating the jurisdiction of this court. On the contrary, respondent avers, in addition to the averments hereinbefore made by her in respect thereto, that her action and motion in said Circuit Court was solely for the purpose of asserting her rights as she conceived and under-(53) stood them to be therein, without in any sense or in the slightest degree intending to evade, or avoid, or thwart, the jurisdiction of this court, if such jurisdiction existed, and for the purpose of more nearly doing, and having exact justice done, between herself and the defendants in said suit, than could be done by the said proceedings in bankruptcy instituted by the plaintiff, which proceedings, respondent avers, were not instituted by plaintiff until about 15 months after said bankrupt act was passed, and not until after the said reversal of said cause in said Supreme Court of Appeals, which ascertained judicially the averments in respondent's bills in said cause filed in 1889, that plaintiff was insolvent, and which at that time prayed for a sale and sequestration of the rents and profits of his said real estate to pay the demand upon which her said judgment subsequently rendered was predicated, and which also prayed, under the statute in such case made and provided in said State of West Virginia, that respondent might have, from the date of the institution of her said

suit, in case she prevailed therein, as she afterwards did, a lien upon the real and personal estate of plaintiff therein charged and alleged to have been fraudulently assigned and conveyed to her prejudice, from the date of the institution of her said suit, to-wit: in said year 1889. And so respondent says and avers that said bankruptcy proceedings of plaintiff were by him instituted fraudulently and for the purpose of hindering, delaying, and defrauding respondent in the collection of her said judgment, against the statute of said State in such case made and provided.

Further answering, respondent says that it is true, as alleged in said bill, that her co-defendant, J. Hopp Woods, special receiver, had advertised said land to be rented, on the second day of April, 1900, at public auction, but it is (54) not true, as respondent is advised, as said bill alleges, that said Woods, as special commissioner under said decree, will proceed to sell said land and distribute the proceeds under the decree of said Circuit Court without reference to the proceedings in bankruptcy in this court, or that the said proceeds will be paid by him to the creditor before said Circuit Court, whether the said creditor should have proven his claim in this court in bankruptcy or not. But, on the contrary, respondent is advised that the said proceeds arising from said rent would be disbursed by said receiver, under future order only of said Circuit Court, and said sale, not having been advertised, as respondent is advised, could not be sold under said decree until the same was advertised, and when sold the proceeds thereof could, and would, only be disbursed also under the future order and direction of said Circuit Court, wherein all the rights of plaintiff, if he has any (since under the bankrupt act his estate passed into the hands of said trustee in bankruptcy, Henry Haymond), could be protected and preserved to him and can still be protected and preserved by said trustee, who, under the bankrupt law, holds the legal title to his estate and interest.

Further answering, respondent says that she denies allegation of said bill that the costs and expenses of making sale of plaintiff's assets in said Circuit Court will be much larger than the costs and expenses of administering the same under the order of this court in bankruptcy, in as much as the principal costs in said suit in said Circuit Court have already been incurred, and but comparatively little costs will be imposed by the further execution thereof, all of which costs, as respondent avers, have been imposed by the futile delays and defences interposed by said plaintiff, and amount in round numbers now in said Circuit Court and said Supreme Court, in said chancery cause alone,

to the sum of about $450.00, all of which, with said judgment and costs aforesaid, remain substantially unpaid, while (55) said plaintiff is still in possession of said land, which consists of about 396¾ acres of valuable grazing land in said county, and has been so in possession thereof since the institution of plaintiff's suit in 1889, using and appropriating the rents and profits to his own use, permitting the taxes to be in arrear, and the said land in December, 1899, sold for the non-payment thereof, allowing the fences and buildings to be out of repair, filth upon said land to remain uncut, valuable parts thereof to be leased to tenants and plowed and injured, and generally committing waste thereon to the irreparable loss and damage to respondent, whose principal security for her said judgment, and the enormous costs in endeavoring to enforce payment of the same, consists of the interest of plaintiff in said land.

Further answering, respondent says she denies the allegation of said bill that said decree of sale complained of is erroneous as to the plaintiff and his creditors, in that it does not adjudicate a lien retained in the said will of James Pickens, deceased, upon said land, which was devised to the plaintiff for the sum of $2,000.00 in favor of said Ann M. Pickens, averred in said bill as the first lien thereon. Respondent denies that any such lien in favor of Ann M. Pickens exists in said will, or is mentioned therein, or if existing or mentioned, directly or indirectly, that the same is, by the terms of said will, charged as a lien upon the land therein devised to plaintiff, of 396¾ acres, hereinbefore referred to, or that the same, by any construction thereof, is imposed as a charge upon said land. And respondent further avers that said Ann M Pickens was also a defendant in said cause, and both answered and testified therein, and in no manner set up or pretended that any such debt or lien was due to her from the estate of James Pickens, who was her husband, or that the plaintiff owed her any such sum, although she did claim in said suit, by her said answer, that two debts, one of $2,500.00 and the (56) other said debt of $2,139.00, which were assailed by respondent as fraudulent, were not so, although by said decree of reversal said last-named debt was held and decreed to be fraudulent, and said first-named debt "hardly above suspicion." Further answering, respondent denies that one Jennie B. Pickens and ——— Young, two of the heirs of said James Pickens, have such interest in said suit as the bill avers, and if they have such interest they are not affected by said decree, because they were neither necessary or proper parties to the bill filed by respondent for relief therein against plaintiff. And respondent denies the gen-

eral allegation of said bill that a sale of said land under said decree, on account of mistakes and errors therein, will result to the prejudice of plaintiff or his creditors.

Further answering, respondent says that she neither admits nor denies the allegation of said bill, because the same is immaterial, that certain creditors of plaintiff are threatening to apply for an appeal from, and supersedeas to, said decree complained of, on account of alleged errors therein, and that unless the said suit be stayed in this court said appeal will be taken, and the final determination of the administration of plaintiff's estate be further delayed; and respondent says that it is neither her right nor desire to prevent an appeal from said decree, if the same be erroneous, as in said bill alleges and submits, as aforesaid, that an appeal to said Supreme Court and not an injunction in this court is the proper way to correct said errors, if they in fact exist, either to the prejudice of plaintiff or of his co-defendants therein.

Further answering, respondent says that the suit wherein said decree complained of is entered, is a suit in equity, in said Circuit Court, styled Susan C. Dent *vs.* Dever Pickens, &c., and that since the institution thereof (57) respondent has been married to and is now the wife of Charles J. Roy, and that respondent and her said husband are citizens and residents of Harrison county, in said State; that she now makes reference thereto, and asks that that there may be read upon this hearing as part hereof, the complete record of the said chancery suit, together with said opinion and mandate therein of said Supreme Court, in order that the matters herein may be fully made known and appear to this court upon the final hearing hereof.

Further answering, respondent says that while she asserts and assumes no control over her co-defendant J. Hop Woods, special receiver and as special commissioner in said cause, as the officer of said Circuit Court, yet she is advised that under prompt obedience to the injunction awarded by this court and served upon him herein, he suspended the renting of said land as prayed for in said bill, and continued the same until the 25th day of April, 1900, pending the consideration of this cause, and plaintiff has also obeyed said injunction by desisting from further prosecution of said suit pending this controversy; moreover, respondent denies that the tract of 396½ acres of land which J. Hop Woods, as special commissioner and special receiver, is directed to rent and sell is liable for the payment of any of the debts of Dever Pickens, except the said judgment in favor of this respondent against him and the balance

due A. M Pickens on her claim of $2,500.00 against him.

And now, having fully answered, respondent prays for affirmative relief herein, and prays that the injunction awarded herein may be dissolved and the bill dismissed; or in default thereof that plaintiff may be required to enter into bond, with good personal security, in a penalty sufficient to indemify and save harmless respondent from all such costs, loss and damages as may be incurred or sustained by her by reason of said injunction in case the (58) same be dissolved, to be approved by the clerk of this court, and when approved filed with the records herein; and respondent prays judgment whether the plaintiff, being adjudged a bankrupt and not discharged, and the legal title to his effects being in his said trustee, the defendant Henry Haymond, can institute or prosecute in his own name the bill herein for the relief sought, all of which respondent denies.

And, having fully answered, respondent prays to be hence dismissed with her costs.

(Signed) SUSAN C. DENT ROY,
Respondent.

EDWIN MAXWELL,
J. HOP WOODS,
Respondent's Counsel.

STATE OF WEST VIRGINIA, / To-wit:
Harrison County, \

Susan C. Dent, the defendant named in the foregoing answer, being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, she believes them to be true.

(Signed) SUSAN C. DENT ROY,
Defendant.

Taken, sworn to and subscribed before me this 17th day of April, 1900.

(Signed) C. W. GORE,
Notary Public for Harrison county, West Virginia.

Filed 21 April, 1900.

WEST VIRGINIA,
(59) Barbour County Court Clerk's Office, May 20th, 1899.

The following mandate of the Supreme Court of Appeals of West Virginia, was this day received in said office and is here entered of record:

COPY MANDATE.

Exhibit with Answer of Susan C Dent, April 15, 1899.

STATE OF WEST VIRGINIA.

At a special term of the Supreme Court of Appeals, continued and held in Charleston, county of Kanawha, on the 15th day of April, 1899. "Absent Judge Dent."

Susan C. Dent, Plaintiff below, Appellant,	
vs.	In Chancery.
Dever Pickens and others, Defendants below, Appellant.	

Upon an appeal from a decree of the Circuit Court of Barbour county, pronounced on the 17th day of November, 1896.

The court having maturely considered the transcript of the record of the decree aforesaid and the arguments of counsel thereon, is of opinion, for reasons stated in writing and filed with the record that there is error in said decree.

It is, therefore, adjudged, ordered and decreed that the decree of the Circuit Court of Barbour county, pronounced in this cause on the 17th day of November, 1896, be, and the same is hereby reversed, set aside and annulled, and that the appellees do pay to the appellant her costs about the prosecution of her appeal in this court in this behalf expended. And this cause is remanded to the Circuit Court of Barbour county, for further proceedings there to be had therein according to the principles stated and directions (60) in the written opinion aforesaid, and further, according to the rules and principles governing courts of equity, which is ordered to be certified to the Circuit Court of Barbour county.

The decision of points in the foregoing cause as appears in the Syllabus and written opinion prepared by Judge McWhorter, was concurred in by Judges English and Brannon, and Brannon filed a note.

A true copy from the record.

Attest:

J. A. HOLLEY, Clerk.

Costs in the Supreme Court of Appeals:

Appellant's costs:

Clerk O. S. Long, - - -	$11 30
" J. A. Holley, - - -	11 55
Printing record, - - -	124 50
Clerk of Circuit Court for transcript,	48 00
Copies for appellant, - - -	6 50
Attorney, - - - -	30 00
	231 85

Appellee's costs:

Clerk, J. A. Holley, - - -	3 85

Attest:

J. A. HOLLEY, Clerk.

Attest:

RICHARD E. TALBOTT,

Clerk of the Circuit Court of Barbour Co., W. Va.

A true copy from the record.

Attest:

(Signed) RICHARD E. TALBOTT,

Clerk of Circuit Court of Barbour County, W. Va.

(61) STATE OF WEST VIRGINIA,

Barbour County Circuit Court Clerk's Office, July 24, 1899.

The following amended mandate of the Supreme Court of Appeals of West Virginia, was this day received in said office and is entered of record:

AMENDED COPY OF MANDATE.

Exhibit With Answer of Susan C. Dent, June 20, 1899.

STATE OF WEST VIRGINIA.

At a regular term of the Supreme Court of Appeals continued and held in Wheeling, county of Ohio, on the 20th day of June, 1899.

Susan C. Dent, Plaintiff below, Appellant, *vs.* Dever Pickens and others, Defendants below, Appelles.	In Chancery.

Upon an appeal from a decree of the Circuit Court of

Barbour county, pronounced on the 17th day of November, 1897.

The court being of opinion that in the decree pronounced in this cause by this court on the 15th day of April, 1899, there is clerical error in the matter of costs. On motion of the appellant, by J. Hop. Woods, her attorney, it is now adjudged, ordered and decreed that Dever Pickens, Minnie B. Pickens, Mollie Pickens, Ann M. Pickens and R. M. Boring, out of their own proper estates, and John D. Pickens, out of the estate of his testator in his hands to be administered, alone and not all of the appellees, do pay to the appellant her costs about her appeal in this court in this behalf expended, and that said decree in said matter of costs be modified accordingly, which is ordered to be certified to the Circuit Court of Barbour county.

A true copy from the record.

Attest:

(Signed) J. A. HOLLEY, Clerk.

(62) Attest:

(Signed) RICHARD E. TALBOTT,
Clerk of the Circuit Court of Barbour Co., W. Va.

ANSWER OF HENRY HAYMOND, TRUSTEE.

A true copy from the record.

Attest:

(Signed) RICHARD E. TALBOTT,
Clerk of the Circuit Court of Barbour Co., W. Va.

(63) To the Honorable John J. Jackson, Judge of the District Court of the United States for the District of West Virginia.

The separate answer of Henry Haymond, trustee in bankruptcy for Dever Pickens to a bill filed by said Pickens against Susan C. Dent, himself and others in this court.

For answer to so much of said bill as relates to this respondent, he says that it is true, as charged in said bill, that in a proceeding before Harvey W. Harmer, a referee in bankruptcy, on the 18th day of November, 1899, he was appointed trustee for said Dever Pickens who had theretofore, on the 30th day of October, 1899, been adjudged by said referee a voluntary bankrupt according to the United States Statute in such cases made and provided.

Respondent further says that it is also true that on the 23rd day of February, 1900, he filed in the Circuit Court of Barbour county in said State, in the chancery cause of Susan C. Dent *v.* Dever Pickens &c., then pending, his petition as such trustee, praying to be made a defendant therein, and asking that petition be held and treated as his answer therein.

And further respondent admits that it is true, as stated in said bill, that he was not authorized or empowered by any order of court to intervene therein.

Respondent further says that after his appointment of trustee, and prior to his filing said petition, he enquired of said referee, H. W. Harmer, when he, respondent, would receive instructions for the sale of the real estate and as to other duties required of him, and received the reply, that certain legal questions were involved in the case which required to be adjudicated before any action would be taken by him in the case.

That said answer or petition was presented to respon-
(64) dent in the office of the said referee by Hon. Edwin Maxwell, as attorney for some of the creditors in the bankruptcy proceeding, and was read by respondent, and at the request of said Maxwell was signed and returned to him, and that respondent's understanding was, that the intention and purport of the filing of said petition was to ask the Circuit Court of Barbour county to carry out the mandate of the Supreme Court of West Virginia in the chancery cause named, and thereby facilitate the proceedings in bankruptcy.

That respondent, in the presence of the said referee in bankruptcy, inquired of the said Edwin Maxwell if it was right and proper that he should file the said petition, having confidence in his advice, and received the reply that it was right that he should do so.

Respondent further says that he understood that the referee was aware of the contents of said petition, and that he, as an official, administered the oath to the respondent attached thereto, and that he has since learned from said Maxwell that the said petition was prepared by said referee, Harmer.

Respondent further states that, from the statements made to him, as aforesaid, he supposed that the said petition was a formal motion to be made to said court in the interest of all the parties concerned; and that he had been informed that it would be objected to by parties interested, and made a matter of controversy, he would not have filed the same on his own motion, and has so stated since filing the same.

Respondent, further answering, repeats that he thought the filing of said petition would hasten the bankrupt proceedings without prejudice to any one concerned.

And, having fully answered, respondent prays to be (65) dismissed, with his costs, &c.

HENRY HAYMOND, Trustee.

STATE OF WEST VIRGINIA, }
Harrison County, } to-wit:

Henry Haymond, trustee, named in the foregoing answer, being duly sworn, says that the facts and allegations therein contained are true, except so far as they therein stated to be on information, and that so far as they are therein stated to upon information, he believes them to be true.

(Signed) HENRY HAYMOND, Trustee.

Taken, sworn to and subscribed before me on this 16th day of April, 1900.

(Signed) W. H. LEWIS,
Notary Public.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE
(66) DISTRICT OF WEST VIRGINIA.

Dever Pickens,
vs.
Susan C. Dent &c. } In Equity.

This cause came on this day to be heard upon the bill and exhibits therewith filed, the answer of Susan C. Dent, Henry Haymond, trustee, and J. Hop Woods, special commissioner and special receiver, and general replication of the plaintiff to each of said answers, and upon the motion heretofore made and entered by the defendants, Susan C. Dent and J. Hop Woods, special rec. and to dissolve the order of injunction heretofore entered, and was argued by counsel.

And the plaintiff thereupon moved the court for leave to amend his said bill by erasing the words "Ann M. Pickens 's" from the ninth page of said bill and inserting in lieu thereof the words "The executors of James Pickens, deceased," which leave is here granted and the said bill accordingly so amended at the bar of the court.

And of its judgment upon the motion aforesaid the

court takes time to consider, and the injunction heretofore awarded is continued until the further order of this court.

"Enter,

"JACKSON, Judge.

"April 27th, 1900."

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE
(67) DISTRICT OF WEST VIRGINIA.

Dever Pickens,
vs.
Susan C. Dent et als. } In Equity.

This cause came on this day to be heard on motion to disolve the injunction heretofore awarded by this court. Upon mature consideration whereof the court is of opinion that the injunction should be dissolved and the bill dismissed. It is therefore ordered, adjudged and decreed that the injunction be dissolved and the bill dismissed with costs against the complainant.

"Enter,

"JACKSON, Judge.

"July 26, 1900."

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
(68) DISTRICT OF WEST VIRGIEIA ON THE 4TH DAY OF AUGUST, 1900.

Dever Pickens,
vs.
Susan C. Dent et al. } In Equity.

The above named complainant, Dever Pickens, deeming himself aggrieved by the decree made and entered in the above entitled cause on the 26th day of July, 1900, hereby appeals from said order and decree to the United States Circuit Court of Appeals for the Fourth Circuit, for the reason specified in the assignment of errors herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fourth Circuit.

Dated this 2nd day of August, 1900.

(Signed) DAVIS and DAVIS and
JOHN BASSEL.
Solicitors for Complainant.

The foregoing claim of appeal is allowed, which is to have the effect and operate as a superseneas upon the appellant giving bond with security in the sum of five hundred dollars.

"Enter,

(Signed) "J. J. JACKSON,
Judge D. C. U. S. D. W. Va."

ASSIGNMENT OF ERRORS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
(69) DISTRICT OF WEST VIRGINIA.

Dever Pickens, }
vs. } In Equity.
Susan C. Dent et al. }

The above named complainant with his petition for an appeal assigns the following errors:

First. It was error not to hold that the District Court had not jurisdiction of the matters alleged in the bill of complaint,

Second. It was error to dismiss complainant's bill, and not grant the relief prayed therein, for the reason that the matters therein were of equitable cognizance and entitled the complainant to the relief asked therein.

Third. For other errors apparent upon the face of the record.

DEVER PICKENS,
By Counsel.

(Signed) DAVIS & DAVIS,

(Signed) JOHN BASSEL,
Counsel for Complainant.

BOND.

(70) Know all men by these presents, that we, Dever Pickens, Minnie B. Pickens and John W. Stewart are held and firmly bound unto the United States of America, in the penal sum of five hundred dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 4th day of August, 1900.

The condition of the above obligation is such, that,

whereas the above bound Dever Pickens hath obtained from the Judge of the District Court of the United States for the District of West Virginia an appeal from a decree rendered against him in the equity cause of Dever Pickens against Susan C. Dent and others on the 26th day of July, 1900.

Now, if the above bounden Dever Pickens shall fail to prosecute his said appeal with effect, shall well and truly pay all such costs, fees and damages as may be awarded against him in case of such failure to prosecute said appeal with effect, then this obligation to be void, otherwise to remain in full force and virtue.

(Signed) DEVER PICKENS, [Seal.]
(Signed) MINNIE B. PICKENS, [Seal.]
(Signed) JOHN W. STEWART, [Seal.]

Taken and acknowledged before me this 4 day of August, 1900, the surety John W. Stewart being qualified as to his sufficiency.

Teste:

(Signed) JASPER Y. MOORE,
Clerk D. C. U. S. D. W. Va.

CITATION.

(71) UNITED STATES OF AMERICA, } *ss:*

The President of the United States to Susan C. Dent & others—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond on the 27th day of September, 1900, pursuant to an appeal granted by the District Court of the United States for the District of West Virginia, wherein Dever Pickens was complainant and you were defendants, to show cause, if any there be, why the judgment rendered against the said plaintiff should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John J Jackson, Judge of the District Court of the United States, this 27th day of August, in the year of our Lord one thousand, nine hundred.

J. J. JACKSON,
Judge U. S. Dist. Court, D. W. Va.

As counsel of Susan C. Dent & others, I accept due service of the within citation.

Given under my hand this 12th day of September, A. D., 1900.

EDWIN MAXWELL.

CLERK'S CERTIFICATE.

(72) UNITED STATES OF AMERICA, } ss:
District of West Virginia, }

I, Jasper Y. Moore, clerk of the District Court of the United States for the District of West Virginia, do certify that the foregoing is a true transcript of the record and proceedings of a certain equity cause lately depending in said court, wherein Dever Pickens was complainant and Susan C. Dent and others were defendants, and now of record and remaining on file in my office.

In testimony whereof I have hereto set my hand and the seal of said court at Clarksburg, in said District, this 12th day of September, A. D., 1900, and in the 125th year of the Indepence of the United States of America.

Seal of the Court.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

On the same day, to-wit: Sept. 24, 1900, the appearance of John Bassel, John J. Davis and John W. Davis is entered for the appellant.

On another day, to-wit: Oct. 4, 1900, twenty copies of the printed record was filed.

And on another day, to-wit: Oct. 8, 1900, the appearance of J. Hop Woods is entered for the appellees.

STIPULATION OF ATTORNEYS

Filed Nov. 6, 1900.

UNITED STATES CIRCUIT COURT OF APPEALS FOURTH CIRCUIT.

No. 382.

Dever Pickens, Appellant, against Susan Dent and others, Appellees.	Appeal from the District Court of the United States for District of West Virginia, at Clarksburg.

We agree that the record of the chancery cause of Susan C. Dent *vs.* Dever Pickens &c., now pending in the Circuit Court of Barbour county, referred to in the answer of the defendant, Susan C. Dent, herewith tendered, marked (A), together with the opinion of the Supreme Court of Appeals of West Virginia in the case of said Dent *v.* Dever Pickens, found at page 579 of Vol. 46 of the West Virginia Reports, referred to in the same answer of the said Dent, may be read in the argument upon the hearing of this cause, without being copied or printed as part of the record of this cause, if either party desires to do so.

Counsel for Appellant

EDWIN MAXWELL,

Of Counsel for Appellees.

J. BASSEL.

DAVIS & DAVIS,

Counsel for Dever Pickens.

At the November term, 1900 of the said Circuit Court of Appeals, to-wit: November 21, 1900, the said cause came on to be heard on the transcript of the record, and was argued by counsel and submitted.

At the February term 1901, of the said Circuit Court of

Appeals, to-wit: Feb. 7, 1901, the court here announced and filed its opinion, which is as follows, to-wit:

OPINION.

Filed Feb. 7, 1901.

UNITED STATES CIRCUIT COURT OF APPEALS.

Fourth Circuit.

No. 382.

Dever Pickens, Appellant.	Appeal from the District Court of the United States for the District of West Virginia, at Clarksburg.
vs.	
Susan C. Dent et al., Appellees.	

[Argued November 21, 1900. Decided February 7, 1901.]

Heard by GOFF and SIMONTON, Circuit Judges, and PURNELL, District Judge.

JOHN W. DAVIS (JOHN BASSELL and DAVIS & DAVIS on the brief) for Appellant; J. HOP WOODS (EDWIN MARSHALL on the brief) for Appellees.

GOFF, Circuit Judge:

On the 27th day of October, 1899, the appellant filed his petition in bankruptcy in the District Court of the United States for the District of West Virginia, and in due time he was adjudged a bankrupt by that court. Prior to his being so adjudged a bankrupt, in the year 1889, a suit in equity had been instituted against him and others, by Susan C. Dent, in the Circuit Court of Barbour county, West Virginia, the object of which was to set aside as fraudulent a certain deed made by him to trustees, bearing date January 14, 1889, and assailing as fraudulent certain debts therein secured. The creditors of appellant were made parties to said suit, and an amended bill was filed in which it was alleged that the complainant, Dent, had recovered a judgment at law against appellant for the sum of $10,000, with interest and costs; the prayer of the bill was that the real estate mentioned therein as the property of appellant, being the same as was described and conveyed in the trust deed, might be sold and the proceeds applied to the pay-

ment of said judgment, and in satisfaction of the liens existing on said land.

The history of that case, extending as it does through years of hard fought and well contested litigation, in said Circuit Court as well as in the Supreme Court of Appeals of West Virginia, while of great interest, is still not essential to the proper understanding and decision of the appeal now to be decided by this court. It is sufficient to say that at the time of the adjudication of the appellant as a bankrupt, it was still pending in and undisposed of by the Circuit Court of Barbour county.

After he was adjudged a bankrupt the appellant, on the 2nd day of November, 1899, filed an answer in said chancery cause in which he set up the proceedings in bankruptcy, and asked that all further action in the State court might be suspended until the District Court of the United States had disposed of the proceedings in bankruptcy, and he claimed in his answer that all his estate, rights and interests of every kind and description had passed from the control of the Circuit Court of Barbour county and into the jurisdiction of the District Court of the United States for the District of West Virginia.

On the 18th of November, 1899, a trustee in bankruptcy was duly appointed for appellant's estate, who in February, 1900, presented to such Circuit Court of Barbour county his petition, asking that said cause be proceeded with to final decree; thereafter, on the 23rd of February, 1900, the said court rendered a decree in the chancery suit mentioned by which, among other things, it was ordered that the deed of trust referred to in the bill be set aside as fraudulent, and that a special receiver and commissioner therein named should rent the land described in the bill until a certain date, and then sell the same, the proceeds thereof to be applied to the payment of the debts due by appellant.

On the 20th of November, 1899, the complainant in the bill mentioned proved her debt (the judgment referred to) before the referee in bankruptcy, as a debt against appellant's estate.

The receiver and commissioner so appointed was proceeding to execute the decree of the Circuit Court of Barbour county when the appellant filed his bill in the District Court of the United States for the District of West Virginia, in which the facts relating to said suit, and to the proceedings in bankruptcy, were fully set forth, and the claim was made that the State court, on the filing of the appellant's answer setting up his adjudication in bankruptcy, should have taken no further action in said cause, and that,

therefore, the decree appointing the receiver and commissioner, to rent and to sell the real estate mentioned, was without authority of law and void. The prayer was that all further proceedings in the suit so pending in Barbour county be inhibited, and that the receiver and commissioner be enjoined from executing said decree during the pendency of the proceedings in bankruptcy, and that the possession and control of the property so decreed to be rented and sold be turned over to the trustee in bankruptcy, the same to be administered by him as assets of the bankrupt.

On March 31, 1900, the injunction so asked for was granted by the district judge, but was by him dissolved on the 26th day of July, 1900. At the same time appellant's bill was dismissed and costs were awarded against him. From the order dissolving the injunction and dismissing the bill the appeal we are now considering was sued out. The errors assigned are that "it was error to hold that the District Court had not jurisdiction of the matters alleged in the appellant's bill of complaint;" and that "it was error to dismiss the complainant's bill, and not grant the relief prayed for, for the reason that the matters therein were of equitable cognizance, and entitled the complainant to the relief asked for."

Unless the Bankrupt Act of 1898 specially authorized the appellant to file his bill in the District Court in connection with the proceedings therein pending relating to his adjudication of bankruptcy, that court had no authority to entertain it, for it was well determined that the district courts of the United States have no jurisdiction of suits at law or in equity between private parties, except where by special provision of an act of Congress such courts are given authority to hear and decide a particular class of suits. That act gives no such jurisdiction. Nor do we find that said bankrupt act gave the bankrupt the right to sue in his own name after he had been adjudicated a bankrupt. His trustee then represented him, and it was the duty of that officer, under the directions of the court, to enter his appearance in any pending suit against the bankrupt—in either a State or Federal court—and defend the same or to prosecute, with the approval of the court, any suit commenced prior to his adjudication. Among the duties imposed by the act on the trustee are those of collecting and reducing to money the property of the estate he represents, and in order that he may do so he is vested by the operation of law with the title of the bankrupt, as of the day he was adjudged a bankrupt, in all his property, excepting that exempt by law from execution

and liability for debts, and including property transferred by him in fraud of his creditors. But the trustee himself could only sue concerning the property of the bankrupt in such courts as the bankrupt could have sued in had proceedings in bankruptcy not have been instituted. The appellant's trustee could not have sued the defendants below in the District Court of the United States for the District of West Virginia, concerning the property of the bankrupt he represented, unless with the consent of said defendants, and it is, we think, quite clear that the bankrupt himself had no standing in that court. *Bardes* vs. *Hawarden Bank*, 178 U. S., 124.

Had the trustee in the discharge of his duty to the creditors of appellant found it proper to have taken action looking to the annulment of the decree directing the sale of the bankrupt's property, or the prevention of the sale thereunder, he would have been compelled, under the statute as it now is, to have sought the aid of the Circuit Court of Barbour county, within the jurisdiction of which the land is situated and the bankrupt is a resident. The evident intention of Congress was not to deprive the courts of the States of the jurisdiction they had previous to the enactment of the bankruptcy law over the property of those adjudicated bankrupts, and this being so apparent we will not be justified in holding that impliedly a jurisdiction exists in favor of the bankrupt, so far as the district courts of the United States are concerned, that did not exist previous to the passage of said law.

If jurisdiction is claimed on account of the subject matter of the suit, and because of the questions of equitable cognizance embraced therein, and not as ancillary to the bankrupt proceedings, then the suit should have been instituted in the Circuit Court of the United States, due regard having been given to the citizenship of the parties.

But independent of this, the order dissolving the injunction and dismissing the bill was proper for other reasons. Conceding the jurisdiction of the court below, so far as the parties to the suit are concerned, nevertheless it is clearly shown by the record that the Circuit Court of Barbour county, West Virginia, had at the time of appellant's adjudication of bankruptcy full and complete jurisdiction of the control over the property of the bankrupt as described in his said bill. Both the bankrupt and his property now in controversy were then, and had been for years theretofore, rightfully before that court, subject to its jurisdiction and bound by its decrees. The institution of the proceedings in bankruptcy did not divest that court

of its jurisdiction over appellant and his property, and it was clearly not only the right but the duty of that court to proceed to final decree in said cause, even if it was advised of the fact that the District Court of the United States for the District of West Virginia had adjudicated one of the defendants thereto to be a bankrupt.

Since the case of *Taylor* v. *Carryl*, 20 How., 583, the course to be pursued has been well defined in cases in which there is a conflict as to jurisdiction between the State and the Federal Courts. Briefly stated the rule is this: considering the peculiar character of our government, and keeping in view the forbearance which courts of co-ordinate jurisdiction exercise toward each other, it follows that the court which first obtains rightful jurisdiction over the subject matter of a controversy must by all other courts be permitted to proceed therein to final judgment. The Federal Courts will not interfere with the administration of affairs lawfully in the custody and jurisdiction of a State court, nor will they permit the courts of the States to interfere concerning litigation rightfully submitted to the decision of the courts of the United States.

The bankrupt act of 1898 does not in the least modify this rule, but with unusual carefulness guards it in all of its detail, provided the suit pending in the State court was instituted more than four months before the District Court of the United States had adjudicated the bankruptcy of the party entitled to or interested in the subject matter of such controversy.

This court recently, in disposing of the case of *Frazier et al.*, vs. *Southern Loan & Trust Co.*, 99 Fed., 707, had occasion to consider and pass upon some of the questions involved in this appeal, and we now refer to the opinion then announced as applicable to the facts shown to exist in this cause.

It follows from what we have said that we are of the opinion that appellants assignments of error are without merit. If there is error in the decree of the Circuit Court of Barbour county, as is charged in appellant's bill, the remedy is by appeal to the Supreme Court of Appeals of West Virginia, and not by intervention in the bankruptcy proceedings. The fact that one of the creditors of the appellant, whose debt had been allowed by the decree of the Circuit Court of Barbour county, had prior to such allowance proved said debt in the bankruptcy proceedings pending in the court below did not operate to deprive the State court of the jurisdiction over the controversy as to which it had for years exercised control.

We find no error in the decree appealed from, and it is

Affirmed.

Afterwards, to-wit: at the same term, to-wit: On February 12, 1901, the court here made and entered the following decree, to-wit:

DECREE.

Filed Feb. 12, 1901.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT.

No 382.

Dever Pickens, Appellant, *vs.* Susan C. Dent et al., Appellees,	Appeal from the District Court of the United States for the District of West Virginia. In Bankruptcy.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of West Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said District Court, in this cause, be, and the same is herby, affirmed, with costs.

NATHAN GOFF.

February 12th, 1901.

And thereupon afterwards, to-wit: On the 6th day of March, 1901, the mandate of this court was issued and transmitted to the District Court for the District of West Virginia at Clarksburg, in the regular order under the Rule.

Afterwards, at the same term, to-wit: March 5, 1901, the said appellant by his solicitor prayed an appeal to the Supreme Court of the United States and filed therewith his assignment of errors and appeal bond, which are as follows, to-wit:

PRAYER OF APPEAL TO THE SUPREME COURT AND ALLOWANCE OF THE SAME.

Filed March 5, 1901.

To the Honorable, the Judges of the Supreme Court of the United States of America:

No. 382.

Dever Pickens, Appellant, *vs.* Susan C. Dent and others, Appellees.	United States Circuit Court of Appeals, Fourth Circuit.

The above named appellant and plaintiff, conceiving himself aggrieved by the order entered in the said cause on the 26th day of July, 1900, by the District Court of the United States for the District of West Virginia, and by the order entered on the 7th day of February, 1901, in the above entitled proceedings by the United States Circuit Court of Appeals for the Fourth Circuit, doth hereby appeal from the said order to the Supreme Court of the United States, and he prays that this general appeal may be allowed; and that a transcript of the record and proceedings and papers upon which the said orders and decrees were made, duly authenticated, may be sent to the Supreme Court of the United States.

ALSTON G. DAYTON,
and DAVIS & DAVIS,
Attorneys for the Plaintiff and Appellant, Dever Pickens.

Appeal allowed on giving bond for costs in the sum of $500.00.

MELVILLE W. FULLER,
Chief Justice of the United States.

ASSIGNMENT OF ERRORS.

Filed March 5, 1901.

To the Honorable the Judges of the Supreme Court of the United States of America.

In the matter of the appeal of Dever Pickens from the order and decree entered and filed on the 7th day of February, 1901, in the chancery cause of the said Dever Pickens, appellant, against Susan C. Dent *et als*, as appellees, then pending in the Circuit Court of Appeals of the United States for the Fourth Circuit.

Assignment of Errors.

Comes now the appellant, Dever Pickens, in the above entitled cause and assigns errors in the decision and decree of the Circuit Court of Appeals of the United States for the Fourth Circuit, in said cause, as follows:

I.

That the Circuit Court of Appeals of the United States for the Fourth Circuit erred in dismissing the appeal of appellant from the decree of the District Court of the United States for the District of West Virginia entered on the 26th day of July, 1900, and in affirming said decree.

II.

That said Circuit Court of Appeals erred in holding that the said District Court had no jurisdiction at the suit of the appellant, who had been duly adjudicated a bankrupt, to ejoin and stay the proceedings pending against him in the Circuit Court of Barbour County, West Virginia, and the execution of the decree entered in said last named cause by the said Circuit Court of Barbour County, on the 23d day of February, 1900, after notice of appellant's adjudication as a bankrupt had been duly set up in said proceeding prior to the rendition of such decree by his supplemental answer filed therein on the 2d day of November, 1899.

III.

That said Circuit Court of Appeals erred in holding that the District Court of the United States for the District of West Virginia was not vested with jurisdiction under the laws of the United States in relation to bankruptcy to entertain the suit brought by appellant, after his adjudication as a bankrupt, to stay a proceeding against him at the time of the filing of his petition, and founded upon a claim from which the discharge of the appellant would be a release.

IV.

That the said Circuit Court of Appeals erred in holding that the appellee, Susan C. Dent, did not by appearing before the referee in bankruptcy and proving her claim against this appellant waive her further right to prosecute against appellant her suit then pending in the said Circuit Court of Barbour County.

In order that the foregoing assignment of errors may

be and appear of record, appellant presents the same to the Court, and prays that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided.

All of which is repectfully submitted.

ALSTON G. DAYTON,
DAVIS & DAVIS,
Counsel for Appellant.

APPEAL BOND.

Filed March 5, 1901.

Know all men by these presents, that we, Dever Pickens, as principal, and John W. Stuart, as surety, are held and firmly bound unto Susan C. Dent Roy, J. Hop Woods, Special Commissioner and Special Receiver, John D. Pickens, in his own right and as executor of James Pickens, deceased, and as executor of Ann M. Pickens, deceased, in the full and just sum of five hundred dollars, to be paid to the said Susan C. Dent Roy, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 2d day March, in the year of our Lord one thousand, nine hundred and one.

Whereas, lately at a session of the Circuit Court of Appeals of the United States for the Fourth Circuit in a suit depending in said court, between Dever Pickens as complainant, and Susan C. Dent Roy and others, as defendants, a decree was rendered against the said Dever Pickens, and the said Dever Pickens having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Susan C. Dent Roy and others, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within ——— days from the date thereof

Now the condition of the above obligation is such, that if the said Dever Pickens shall prosecute said appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

DEVER PICKENS, [Seal.]
JOHN W. STUART, [Seal.]

Sealed and delivered in the presence of—
JNO. W. DAVIS.

Appoved by:

NATHAN GOFF,
Judge U. S. Circuit Court of Appeals.

March 2d, 1891.

Approved:

MELVILLE W. FULLER,
Chief Justice of the United States.

CITATION.

UNITED STATES OF AMERICA } ss:

To Susan C Dent Roy, J. Hop Woods, Special Commissioner and Special Receiver, John D. Pickens, in his own right and as executor of James Pickens, deceased, and as executor of Ann M. Pickens, deceased, Greeting:

You are hereby cited and abmonished to be and appear at the Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the United States Circuit Court of Appeals for the Fourth Circuit, wherein Dever Pickens is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this fifth day of March, in the year of our Lord one thousand nine hundred and one.

MELVILLE W. FULLER,
Chief Justice of the United States.

I accept service of the within citation on behalf of Susan C. Dent Roy and J. Hop Woods, Special Commissioner and Special Receiver, this 9th day of March, 1901.

EDWIN MAXWELL,
Of Counsel for Defendants above named.

ORDER TO TRANSMIT RECORD.

And thereupon it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Teste:

HENRY T. MELONEY, Clerk.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA, } *ss:*

I, Henry T. Meloney, clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

Seal of the Court.

In testimony whereof I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, on this 30th day of March, A. D., 1901.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals,
Fourth Circuit.

10058

Supreme Court

OF THE

United States.

DEVER PICKENS, Appellant.

versus

SUSAN C. DENT RAY *et al.*, Appellees.

No. 78.

October Term, 1902.

Appeal from the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond.

Brief for Appellant.

STATEMENT OF CASE.

On the 27th day of January, 1888, Susan C. Dent instituted her action of Trespass on the Case in Assumpsit in the Circuit Court of Barbour county, West Virginia, against the appellant, to recover damages for the alleged breach of marriage contract on his part.

To her declaration appellant appeared and pleaded non-assumpsit, and issue was thereon joined.

On the 28th day of January, 1889, the said plaintiff filed a bill in equity, pending the said action of assumpsit and before the issue joined thereon was tried, to set aside as fraudulent a certain deed of trust made by the appellant to John J. Davis and Hon. A. G. Dayton, trustees, on the 14th day of January, 1889, and assailing as fraudulent certain debts therein secured to Ann M. Pickens, Rachel M. Boring and others.

At the September Rules, 1889, she filed an amended bill in equity, alleging that since the filing of her original bill she had recovered judgment on the 23d day of July, 1889, against the appellant for $10,000.00, with interest thereon from date of judgment, [illegible] costs. A writ of error was obtained by appellant from [illegible]ent from the Supreme Court of Appeals of West Virginia, and the same was thereafter reversed and set aside by that Court, and a new trial awarded him.

In February, 1898, the said action of assumpsit was again tried in the Circuit Court of Barbour county, and on the 27th day of February, 1892, the plaintiff, Susan C. Dent, recovered a judgment against the appellant for $9,000.00, with int. from that date, and $971.34 costs. After the recovery of this last named judgment, the said Dent filed her second amended bill in the Circuit Court of Barbour county, alleging the recovery of said judgment, and assailing as fraudulent a certain marriage settlement made between the appellant and Minnie Coburn, who is now his wife, and also further assailing the said deed of trust, and praying that said marriage settlement and said deed of trust might bedeclared fraudulent as to her said judgment, and that the property embraced therein be subjected to its payment. Depositions were taken and said chancery cause was matured for hearing and submitted for final decree, and at the November term, 1896, of the said Circuit Court of Barbour county, a decree was pronounced therein, dismissing the plaintiff's bill and decreeing costs in favor of appellant. From this decree the said Dent obtained an appeal to the Supreme Court of Appeals of West Virginia, and upon the hearing of said appeal the said decree was reversed and cause remanded for further proceedings to be had

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in accordance with the mandate of said Court. The cause stood thus until the February term, 1900, of the said Circuit Court of Barbour county.

In the meantime, to-wit, on the 27th day of October, 1899, the appellant filed his petition in bankruptcy in the District Court of the United States for the District of West Va., praying to be adjudged a voluntary bankrupt, and on the 30th day of October, 1899, he was duly adjudicated a bankrupt by said Court. Thereafter, to-wit, on the 2d day of November, 1899, while said cause was still pending in the said Circuit Court of Barbour county and before the rendition of the decree therein complained of in the appellant's bill in this cause (see decree, printed record, p. 18), appellant filed his answer in said chancery cause, alleging his adjudication as a bankrupt, and praying that all further proceedings therein be suspended and stayed until the bankruptcy proceedings were finally heard and determined, and that by reason of said adjudication in bankruptcy, all appellant's property interests, rights, estate, &c., had passed under the control and jurisdiction of said bankruptcy court, and could alone be administered and disposed of by its order.

On the 18th day of November, 1899, Harvey W. Harmer, the referee in bankruptcy, appointed Henry Haymond trustee in bankruptcy of appellant's estate.

On the — day of February, 1900, the said trustee, Haymond, filed a petition and answer in said chancery cause pending in Barbour county, at the instance of one of the counsel for the said Susan C. Dent, the answer or petition having been prepared by the referee in bankruptcy, praying the said Circuit Court to proceed in said cause and in the enforcement of the liens against the estate of said bankrupt, which answer or petition was filed without any order or direction from the said bankrupt court to the said trustee to so proceed, and solely at the instance of the counsel for said Dent and at the suggestion of the referee in bankruptcy, who had no authority to advise in the premises. (See printed record, p. 16.)

On the 23d day of February, 1900, the said Circuit Court of Barbour county, notwithstanding appellant had been adjudicated a bankrupt on the said 30th day of October, 1899, and had filed his

supplemental answer in said chancery cause on the — day of October, 1899, wherein he alleged his bankruptcy and prayed for a suspension of further proceedings in said chancery cause, proceeded to hear the same and rendered a decree therein, annulling the said deed of trust and the said marriage settlement with Minnie Coburn, and holding that certain debts in said trust secured to Ann M. Pickens, Rachel M. Boring and the estate ofJames Pickens to be fraudulent and void, appointing J. Hop Woods, another one of the counsel of said Miss Dent, a special receiver to rent out the land named in the bill in said cause, until the 30th of October, 1900, and also a special commissioner to sell the said land, who was directed to take possession of the same under a writ of possession which by said decree was awarded him. (See decree, printed record, p. 18.) By this decree the Circuit Court of Barbour county undertook to divest the trustee in bankruptcy of the possession of said bankrupt's property, and turn it over to a receiver and commissioner of its own appointment, the right of possession as well as the right of property thereon at that time being in the trustee in bankruptcy by virtue of his appointment as such, and the operation of the Act of Congress entitled "An Act to Provide a Uniform System of Bankruptcy Throughout the United States."

On the 20th day of November, 1899, and *before* the rendition of the decree of the 23d day of February, 1900, the said Susan C. Dent, by her attorney, Edwin Maxwell, proved her debt or judgment before the referee in bankruptcy, as a debt against the estate of said bankrupt. By appearing and proving her claim in bankruptcy Miss Dent must be regarded as having chosen the forum in which to pursue her debtor, and was barred from prosecuting her claim in another tribunal, and the decree of the 23d day of February, 1900, ought not to have been rendered.

After the several acts and proceedings hereinbefore recited had transpired, and the special receiver and commissioner Woods had advertised the land of appellant for rent, and was proceeding to execute the decree of the Barbour county Circuit Court, the appellant filed his bill in equity in the District Court of the United States for the District of West Virginia, alleging his bankruptcy, the appointment of a trustee in bankruptcy, the pendency of the said suit

in chancery in the Circuit Court of Barbour county, the filing of his supplemental answer therein, setting up his adjudication as a bankrupt, the rendition by the said Court of the decree of sale and rental, and the advertisement of said lands for rent by said Woods special receiver, the proof of said debts before the referee in bankruptcy, and especially the proof by the said Miss Dent of her debt against appellant, alleging that such proof on her part barred her from prosecuting her claim further in the said Circuit Court of Barbour county, and stating in his said bill, 1, the debts due and owing by him, several of which had not been provided for in said decree; 2, also the nature and character of the estate he held in said land devised to him by the will of James Pickens, deceased; 3, the want of proper parties to said bill of Miss Dent, viz, Jennie B. Pickens and —— Young; 4, that the said Miss Dent had fraudulently procured the answer or petition of the said Haymond, trustee, to be filed in said chancery cause for the sole purpose of preventing the estate of appellant from being administered in a court of bankruptcy, and the debts and liens against the same and the priorities of his several creditors from being adjudicated therein. The prayer of the appellant's bill is for an injunction to restrain the plaintiff in said chancery suit and each of the defendants named therein, creditors of appellant, from all further proceedings therein, and to restrain the said Woods as special receiver and commissioner from proceeding under said decree to either rent or sell said lands mentioned therein and described in the will of James Pickens, during the pendency of said bankruptcy proceedings. An injunction was awarded as prayed for by the Judge of the said United States District Court, on the 31st day of March, 1900. (See printed record, p. p. 8-9.)

(We think it proper to state to the Court at this point that either the clerk in copying the record, or the printer in printing it, has inadvertently omitted to insert a copy of the will of James Pickens, deceased, which was filed with appellant's bill and marked Exhibit "J." Leave is asked now to supply said omission by filing a copy of said will.)

After said injunction was awarded and process served on the defendants to the bill, Susan C. Dent, on the 4th day of April, 1900, gave notice that on the 16th day of April, 1900, at Clarksburg, Har-

rison county, West Va., she would move the United States District Court for a dissolution of said injunction, and on the day named in said notice for dissolution, she and the said Haymond, trustee in bankruptcy, and the said Woods, as special receiver and special commissioner, filed their separate answers to the bill, to which appellant replied generally, and the further hearing of the motion was adjourned to Parkersburg, for the 27th day of April, 1900. On the day last named the cause was argued, and the Court took time to consider of the motion, and on the 26th day of July, 1900, dissolved the said injunction and dismissed appellant's bill and awarded costs against him.

The answers of Haymond and Woods admitted substantially the allegations of the bill with reference to them, said Haymond alleging in his answer that he was advised or induced to file his said petition or answer in the chancery cause of Susan C. Dent against appellant and others by one of her counsel, and that his said answer was prepared by the referee and sworn to by him before said referee, that he filed said answer without the order or leave of said District Court, and at the suggestion of counsel for Susan C. Dent. The said Susan C. Dent in her answer denied the jurisdiction of the said District Court to suspend the proceedings in her said chancery suit, denied that she fraudulently procured said Haymond to file his answer therein, and prayed for a dissolution of the said injunction. These several answers are to be found on p. p. 27, 29 and 42 of printed record.

From the order of the District Court dissolving said injunction, the appellant, on the 2d day of August, 1900, applied for an appeal, which was allowed, and was to have the effect of a supersedeas upon his giving bond with security in the sum of five hundred dollars, which bond was given on the 4th day of August, and the appeal perfected.

With his petition for an appeal appellant assigned the following errors:

First. It was error to hold that the District Court had not jurisdiction of the matters alleged in the appellant's bill of complaint.

Second. It was error to dismiss the complainant's bill, and not

grant the relief therein, for the reason that the matters therein were of equitable cognizance and entitled the complainant to the relief asked therein.

Third. For other errors apparent on the face of the record.

The United States Circuit Court of Appeals for the Fourth Circuit refused to reverse the decision of the District Court, and a further appeal to the Supreme Court of the United States was taken in due form.

The point on which the decision of the District Court must be sustained or reversed is purely one of *jurisdiction*. The appellant maintains that under the Bankruptcy Act of 1893, the District Court of the United States may, in a proper case, take jurisdiction of the property of the bankrupt, even though a suit concerning such property is at that moment pending in a State Court of competent jurisdiction.

It cannot be contended that the very fact of bankruptcy confers exclusive jurisdiction of the bankrupt's property on the District Court. In fact, only in peculiar cases will a Federal Court sitting in bankruptcy take jurisdiction of property to the exclusion of a State Court which is already concerned in the matter. But we submit that the present case discloses the necessary peculiar conditions.

Section 2, sub head 7, of the Bankruptcy Act of 1893, gives Courts of Bankruptcy the power to "cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as otherwise herein provided." The same section also says "nothing in this section shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated." These clauses confer a plenary jurisdiction over the property of the bankrupt, authorizing the bankruptcy court to reduce the property of the bankrupt into possession and to determine litigation concerning such property in other courts, except in so far as the provisions of this Act expressly limit such jurisdiction.

Well settled principles of law and comity prevent an assumption of jurisdiction by a Federal Court to the exclusion of a State Court in cases of concurrent jurisdiction, but these principles will not apply in bankruptcy cases, exclusive jurisdiction, according to the Constitution, being in the Federal Courts, unless rights have become vested or liens affixed to the property in question. In the present case the subject matter of the controversy was, it is true, before the State Court, but no rights had been determined before the filing of the petition and the discharge in bankruptcy of the appellant, Dever Pickens. The last decree of the Circuit Court of Barbour county previous to the discharge in bankruptcy was entered in 1896, and on April 13th 1899, the Supreme Court of Appeals of West Virginit refused to sustain the Court below, reversed the said decree and remanded the cause to the Barbour Circuit Court for further proceedings. The proceedings in bankruptcy were instituted and completed before such further action was taken by the Barbour Circuit Court, and the said bankruptcy proceedings were brought to the notice of that Court by a proper pleading before any further action in the matter was taken.

As if despairing of further relief from the Barbour Circuit Court, the appellee proved her claim before the court of bankruptcy, and as we shall endeavor to show later, waived any rights she may have had in any other tribunal and made a final election. It will be seen that at this time the State Court did not have the custody and possession of the property of the bankrupt. There was pending, it is true, an ordinary suit in equity by a creditor of the bankrupt to enforce the lien of a judgment and to subject his property to sale for its satisfaction.

Primarily the fund first available for its payment was his personalty; it must appear to have been exhausted or that he is possessed of none sufficient to satisfy the judgment, to be shown by a proper return upon a writ of fieri facias before the lien as effecting his realty can be enforced in a court of equity. The pendency of the suit did not place the Court in the possession or custody of the property. That could only come under a decree of sale and the appointment of a receiver, and at the time such proceedings did take place, they were wholly void. The adjudication in bankruptcy

had become final, and the State Court having neither custody nor possession of the property, nor yet a lien thereon, the sole right in and over all the property of Dever Pickens was vested in the trustee in bankruptcy. Any attempt to seize the property or wrest it from the control of such trustee was an unwarranted violation of those very principles of equity which have been invoked in behalf of the appellee in the Courts below. The proper and indeed the only defense against such an unauthorized aggression was, and is, an injunction from the Court aggrieved, in this case, the District Court of the United States for the District of West Virginia, directed to the Court encroaching on its rights, namely, the Circuit Court of Barbour county.

While no case has arisen in which a pending suit in a State Court has been enjoined by a Federal Court sitting in bankruptcy, the propriety of the remedy by injunction is shown by the frequent decisions sustaining injunctions forbidding State officials to sell property of a bankrupt under an execution levied after the discharge in bankruptcy. Supposing the action of the State Court to be unwarranted, the propriety of a remedy of this nature cannot be questioned. While under the Revised Statutes (Section 720), a writ of injunction will not be granted to stay proceedings in a State Court, cases in bankruptcy are excepted. If no proceedings had been commenced in the State Court prior to the discharge in bankruptcy, the propriety of the remedy by injunction is not to be doubted.

That the Barbour Circuit Court should have been moved to further action where such further action was so plainly illegal and unnecessary, can only be explained by the fact that a petition urging such action was entered in the name of the trustee in bankruptcy. That such petition was fraudulently procured by the appellee and was entered by the said trustee in entire ignorance of the premises and consequences is plainly shown in the answer of Henry Haymond, trustee, on page 42 of the printed record of the proceedings in Barbour Circuit Court. Having been procured by fraud and in consequence of the admitted ignorance of the trustee in bankruptcy, the petition of said trustee can only be nullity and should have no bearing in this case to the prejudice of the appellant.

Let us suppose, nevertheless, that the pending proceedings in the Circuit Court of Barbour county gave the appellee such a lien on the property in litigation that the District Court sitting in bankruptcy will not intervene. It is plain, nevertheless, that by consent of both parties, the District Court may determine the matter. The appellant submits that when the appellee chose to prove her claim in the bankruptcy court she made an election preventing her from seeking a remedy in any other tribunal, and giving the District Court *jurisdiction by ~~counsel~~* Consent. (See Bankruptcy Act of 1898, Sec. 23, C.)

This position is supported by the case of Dingee v. Becker, 9 B. R. 508. This case arose, it is true, under the Act of 1867, but the Act of 1898, as we insist, does not change the law on the subject, as will appear from Section 11 of the Act of 1898.

It is plain that when Federal and State Courts have concurrent jurisdiction a suitor who pleads his cause in one forum bars his remedy in the other, according to a rule of comity too well known to be disputed. The possible consequences of a contrary view show how necessary this rule is.

Great stress has been placed on the case of Eyster v. Gaff, 91 U. S. 521, in the Court below, and *obiter dicta* have been quoted in opposition to the contention of the appellant, but a casual investigation will show that Eyster v. Gaff differs so widely from the case at bar as to furnish no analogy, much less binding authority.

Prior to 1868 McCluer mortgaged certain lots to the Gaffs, which he also leased to Eyster. In 1868 Gaff instituted a suit to foreclose, which was consummated in 1870, one month after McCluer's discharge in bankruptcy. Gaff having purchased the lots at the sale in the foreclosure suit, Eyster sought to eject him on the ground that the sale by the State Court was void, sole title to the land being in the assignee in bankruptcy. This Court properly held that the assignee took no title. It will be perceived, however, that there are several vital differences from the case at bar. The Gaff's, being mortgagees, had a lien so well fixed as to be unassailable by subsequent transferees, while the appellee at the time of Picken's adjudication in bankruptcy, had not even a provisional priority, and could have none until she proved the Pickens transfer fraudulent.

A trustee in bankruptcy cannot draw unto himself property of the bankrupt in which the rights of others have vested, but where the rights of the creditors have not vested, the trustee takes title, *ipso facto*, to all the property of the bankrupt in order to distribute it according to the proper priorities when they shall have been determined.

In Eyster v. Gaff no attempt was made to interpose the proceedings in bankruptcy as a bar to further proceedings in the State Court, which, of course, could do nothing but proceed to a final settlement of the matter, according to the law to which it owed its existence; while in the case at bar, the appellant filed a pleading in proper form setting up the prior adjudication in the District Court, thus giving notice that a Court of competent jurisdiction had already taken the matter in hand, and furnished a ground for staying further proceedings pending the settlement of the estate of the bankrupt in accordance with Section 11 of the Bankruptcy Act.

The case of Bardes v. Hawarden Bank, 178 U. S. 154, has been relied on in the Court below to show that the State Courts alone have jurisdiction of suits by trustees in bankruptcy to collect the assets of the bankrupt. It will be seen that the case of Bardes v. Bank furnishes no parallel to this case for the following reasons: (1) Bardes v. Bank holds that "United States District Courts have no jurisdiction over independent suits brought by a trustee in bankruptcy to assert a title to money or property as assets of the bankrupt against *strangers* to the bankruptcy proceedings, *unless by consent* of the proposed defendants, such jurisdiction being denied them by Section 23 of the Bankruptcy Act of 1898."

In the case at bar it appears that the appellant is not a stranger to the bankruptcy proceedings and by electing to prove her debt in the District Court has given her consent to proceedings therein. (2) In Bardes v. Bank the parties denying jurisdiction had custody and possession of the property in question and a *prima facie* priority at the least. If the trustee wishes to dispute that priority he must come to them and sue them in the Court where he must have sued if no bankruptcy adjudication had taken place. While in the case at bar the appellant had custody and possession of the property

and if the appellee wishes to dispute his priority she must come to him and urge her claim in the tribunal proper to the appellant. If she refuses to do this and is on the point of illegally depriving him of the rights vested in him he may resort to his proper tribunal (in the case of a bankrupt, the District Court of the United States) to prevent such infringement on his rights.

The case of Frazier v. Southern Loan & Trust Co., 99 Fed. Rep. 707, has also been relied on by the appellee. This case is not binding authority on this Court, yet it will not be amiss to point out a few fundamental differences from the case at bar. (1) The State Court had *taken possession of the bankrupt's assets by its receiver* nearly five years before the adjudication in bankruptcy. (2) No attempt was made to set up the proceedings in bankruptcy in bar of a decree of sale. (3) The plaintiffs never proved their debt in the court of bankruptcy nor voluntarily submitted to its jurisdiction.

It has been urged that even conceding the jurisdiction of the District Court in such a suit by the trustees in bankruptcy, the appellant, being divested of title, has no standing in the District Court.

The District Court sitting in bankruptcy has a plenary equity jurisdiction over the estate of the bankrupt, except where specifically denied, as has been hereinbefore shown. If Dever Pickens has an equity in respect to his bankrupt estate he is entitled to the relief prayed for. He urges the following considerations:

1. To save unnecessary costs, expenses and time, as well as the entanglements and litigation that *must* ensue where two Courts of concurrent jurisdiction attempt to adjudicate in respect to the same subject matter, the settlement of the estate should be referred to the tribunal naturally proper to such proceedings, besides being more expeditious and less costly. His equity in the preservation of his estate.

2. As the record shows, the trustee in bankruptcy, Henry Haymond, is admittedly ignorant of his rights and duties, and permitted himself fraudulently to be drawn into courses prejudicial to the estate of his bankrupt.

Since the trustee, through fraud on the one hand and ignorance on the other, permits the estate to be wasted, it devolves upon the bankrupt himself to look after his own interests and his right to equitable relief in a court of bankruptcy is perfect.

Respectfully submitted,

DAVIS & DAVIS,
Counsel for Appellant.

John W. Davis.

No. 78.

Brf. of Maxwell for Appellee

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JAMES H. McKENNEY,
Clerk.

Supreme Court

Filed Nov. 21, 1902.

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DEVER PICKENS, Appellant,

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Brief for Appellee, Susan C. Dent Roy,

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The statement of facts and the recital of the pleadings as contained in Appellant's brief upon this appeal are substantially correct, except in respect to the Trustee's answer. The facts in relation to it are as stated in Appellee's answer, and in the answer of the trustee, to which there seem to be no replications in the record.

It is submitted, however, for Appellee that neither the District Court originally, nor the Circuit Court of Appeals, nor,

indeed, this Court, upon this appeal, has any jurisdiction of this proceeding, and it is therefore true, as stated in Appellant's brief (p. 9) that the question here is first one of jurisdiction.

The Circuit Court of Appeals is the Court of last resort in such a proceeding, even assuming what is herein denied, that the District Court had jurisdiction. If the question of the jurisdiction of the District Court in the first instance be in issue, the appeal should be this Court, and not to the Circuit Court of Appeals.

Circuit Court of Appeals, Act March 3, 1891. Sections 5 and 6.

Nothing in the Bankruptcy Act of 1898 confers jurisdiction in such a case upon the District Court. The section defining jurisdiction is section 23, which is as follows:

"*a* The United States Circuit Courts shall have jurisdiction of all controversies at law and equity, as distinguished from proceedings in bankruptcy, between Trustees as such and adverse claimants, concerning the property acquired or claimed by the Trustees, in the same manner and to the same extent only as though the bankruptcy proceedings had not been instituted and such controversies had been between the bankrupt and such adverse claimants.

b Suits by the Trustee shall only be brought or prosecuted in the Courts where the bankrupt, whose estate is being administered by such Trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

c The United States Circuit Courts shall have concurrent jurisdiction with the Courts of Bankruptcy, within their respective territorial limits, of the offenses enumerated in this Act."

In the opinion delivered by the Circuit Court of Appeals in this cause Judge Goff says:

"Unless the Bankruptcy Act of 1898 specially authorized the Appellant to file his bill in the District Court in connection with the proceedings therein pending relating to his adjudication of bankruptcy, that Court had no authority to entertain it, for it was well determined that the District Courts of the United States

have no jurisdiction of suits at law or in equity between private parties, except where, by special provision of an Act of Congress, such Courts are given authority to hear and decide a particular class of suits. That act gives no such jurisdiction. Nor do we find that said Bankrupt Act gave the bankrupt the right to sue in his own name. His Trustee then represented him, and it was the duty of that officer, under the directions of the Court, to enter his appearance in any pending suit in either a State or Federal Court, and defend the same, or to prosecute, with the approval of the Court, any suit commenced prior to his adjudication. Among the duties imposed by the Act on the Trustee are those of collecting and reducing to money the property of the estate he represents, and in order that he may do so he is vested by the operation of law with the title of the bankrupt, as of the day he was adjudged a bankrupt, in all of his property, excepting that exempt by law from execution and liability for debts, and including property transferred by him in fraud of his creditors. But the Trustee himself could only sue concerning the property of the bankrupt in such Courts as the bankrupt could have sued in had proceedings in bankruptcy not have been instituted. The Appellant's Trustee could not have sued the Defendant's below in the District Court of the United States for the District of West Virginia concerning the property of the bankrupt he represented unless with the consent of said Defendants, and it is, we think, quite clear that the bankrupt had no standing in that Court."

Judge Goff's opinion (this record), pp. 52-3.

Bardes v. Hawardin Bank, 178 U. S., 124.

"If jurisdiction is claimed on account of the subject matter of the suit, and because of the question of equitable cognizance embraced therein, and not auxilliary to the bankrupt proceedings, then the suit should have been instituted in the Circuit Court of the United States, due regard having been had to the citizenship of the parties."

Judge Goff's opinion, p. 53

Besides, an injunction by the Federal Court of a State Court is void under the United States Statutes, and might be disre-

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garded without subjecting the defendant to proceedings for contempt.

Revised Stat. U. S., Sec. 720.

Laidley v Jasper, 49 W. Va., 526.

Huntington v. Laidley, 176 U. S., 668–678

But, conceding jurisdiction to the District Court, it could not in a cause like this, under the spirit of the Bankruptcy Act, and the decisions of this Court thereunder, divest the State Court—the Circuit Court of Barbour county—where the bankrupt resided, and where his property was, of jurisdiction acquired of both as far back as 1889.

Judge Goff's opinion, p. 54

Taylor v. Carry, 20 How., 583.

Eyster v. Gaff, 91 U. S., 521.

Frazier v. South L. and Trust Company, 99 Fed. Rep., 707.

The Circuit Court of Barbour county had not only acquired jurisdiction of Appellant's person and property years before his adjudication of bankruptcy, but in the Chancery Cause, the decree whereof was enjoined in the District Court by Appellant, had under the prayers of the bills therein and the opinion of the State Supreme Court of Appeals, actual custody of his property.

Dent v. Pickens, 46 W. Va., 379.

In that opinion, which was rendered in the fall of 1898, but reheard on motion of Appellant, and handed down unchanged on the 15th day of April, 1899, directions were, under the Statute of the State in such case made and provided, (Code, Ch. 135, Sec. 26) given by said Supreme Court of Appeals to the Circuit Court below, to take charge of certain of Appellant's personal property, and "take such further proceedings as might be necessary to sequester the rents, issues and profits of his real estate."

Under the 29th section of the same Statute this opinion of the Supreme Court became *ipso facto* the decree of the Circuit Court below. That section provides that "the Court from which any case may have come to the Supreme Court of Appeals shall

enter the decision of the appellate Court as its own, and execution thereon may issue accordingly. If such decision be received by the clerk of the Court below in vacation he shall enter it of record in his order book, and thereupon such execution may issue and such proceedings be had in the case as would have been proper if the decision had been entered in Court."

It was not until after the rendition of this opinion and the delay occassioned by Appellant's motion to rehear it, and before the Circuit Court below could (as the record therein shows, by reason of continuances made necessary by the Statute of the state on account of the death of a defendant therein) by the decree enjoined, entered at the February term thereof, 1900, carry into effect the mandate and directions of the said Supreme Court of Appeals, that Appellant conceived, or at least executed, the design of thwarting the State Courts by proceedings in bankruptcy.

It is submitted for Appellee that he was too late. The custody of his property was in the State Courts, if not, in fact, in equity and by operation of law, and actual seizure was not necessary.

High on Receivers, Sec. 4.

Beverly v. Bronke, 4 Gratt., 187.

Kimberley v. Hartley (S. C.,) 1 Fed., 571

Taylor v. Carryl, 20 How., 583 (*Supra*).

Carrell v. Heyman, 111 U. S., 82.

It should be remembered, too, that the suit against Appellant in the State Court was a proceeding which prevailed and falls within the following Statute (Code, Ch. 133, Sec. 2):

"A creditor before obtaining a judgment or decree for his claim, may institute any suit to avoid a gift, conveyance, assignment or transfer of or charge upon the estate of his debtor which he might institute after obtaining such judgment or decree, and he may in such suit have all the relief in respect to said estate, which he would be entitled to after obtaining a judgment or decree for the claim which he may be entitled to recover."

Under this Statute it has repeatedly been held by the Supreme Court of Appeals of West Virginia that a lien was credited

from the date of the institution of such suit.

Sweeny v. Refining Co., 30 W. Va., 448.

Clark v. Figgins, 31 Ib., 155

Guggenheimer v. Lockbridge, 39 Ib., 457.

And resort need not be had for satisfaction in the first instance to execution upon personal property, but may be had at once against the property assailed as fraudulently conveyed.

Hoffman v. Fleming, 43 W. Va., 762.

It is submitted that the Trustee of Appellant was but a *pendent lite* transferee of the title to Appellant's effects, whether real or personal, and was bound, like a person purchasing pending a controversy, to respond to any decree that might be properly entered therein.

"The obvious reason for this is," as Justice Miller said in Eyster v. Gaff, *supra*, "that if, when the jurisdiction of the Court once attached, it could be ousted by the transfer of the Defendant's interest, there would be no end to the litigation and justice would be defeated by the numbers of these transfers."

Again, in the same case, Justice Miller also says: "The opinion seems to have been quite prevalent in many quarters at one time that the moment a man is declared a bankrupt the District Court which has so adjudged draws to itself by that act not only all control of the bankrupt's property and credits, but that no one can litigate with the assignee contested rights in any Court, except in so far as the Circuit Courts have concurrent jurisdiction, and that other Courts can proceed no further in suits of which they had at that time full cognizance of, and it was prevalent practice to bring any person who contested with the assignee any matter growing out of disputed rights of property or of contracts into the Bankrupt Court by the service of a rule to show cause, and to dispose of their rights in a summary way. This Court has steadily set its face against this view.

The debtor of a bankrupt, or the man who contests the right to real or personal property with him, loses none of these rights by the bankruptcy of his adversary. The same Courts remain open to him in such contests, and the Statute has not divested these courts of jurisdiction in such actions. It has for certain

classes of actions conferred a jurisdiction for the benefit of the assignee in the Circuit Court and District Courts of the United States. It is concurrent with, and does not divest that of those Courts.

Appellee disputes the position of Appellant's brief herein, that Appellee consented to the jurisdiction of the District Court by proving her claim in bankruptcy. This point is decided against Appellant by the opinion of the Circuit Court of Appeals herein (p. 54).

It has also been held that a claim having priority must be proved in bankruptcy proceedings, whether to be enforced in that Court or not.

In re Falls City Shirt Mfg. Co., 98 Fed. Rep., 592.

Vol 16, (2d Ed.,) Am. and Eng. Ency. Law, p. 688.

In conclusion it is submitted that it would be almost the equivalent of a denial of justice to permit the District Court, which has but concurrent, if any, jurisdiction in this cause, to practically nullify this prolonged litigation in the State Courts. All the rights which Appellant claimed or might have claimed were involved in these Courts, and have been adjudicated against him by the decree enjoined. Why should he be permitted to litigate them over again in the Bankrupt Court? A matter once in issue, or which under the pleadings might have been put in issue, is determined by the final decree.

McCoy v. McCoy's Adm'r., 29 W. Va. 791.

Appellee here refers to the record in the chancery cause pending in the State Court, which by stipulation of counsel in the record (p. 49) is made part thereof, and insists that this appeal should be dismissed, or the decree of the Circuit Court of Appeals herein affirmed, with costs.

EDWIN MAXWELL,
J. HOP. WOODS,
Counsel for Appellee.

Clarksburg, W. Va. Nov. 18, 1902.

Supreme Court of the United States.

No. 78.—October Term, 1902.

Dever Pickens, Appellant, vs. Susan C. Dent Roy et al. } Appeal from the United States Circuit Court of Appeals for the Fourth Circuit.

[December 1, 1902.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This is an appeal from a decree of the United States Circuit Court of Appeals for the Fourth Circuit affirming the decree of the District Court for the District of West Virginia dissolving an injunction and dismissing a bill filed in that court by Dever Pickens against Susan C. Dent and others. 106 Fed. Rep. 653.

The facts necessary to be considered in disposing of the case were stated by the Circuit Court of Appeals in substance as follows: January 24, 1889, Susan C. Dent exhibited her bill in the Circuit Court of Barbour County, West Virginia, against Dever Pickens and others, to set aside as fraudulent a certain deed made by Pickens to trustees, bearing date January 14, 1889, and assailing as fraudulent certain indebtedness thereby secured. At the succeeding September rules an amended bill was filed alleging that complainant Dent on July 23, 1889, recovered a judgment at law against Pickens for the sum of $10,000, with interest and costs. Complainant prayed that the real estate mentioned in the bill as the property of Pickens, and described in the trust deed, might be sold, and the proceeds applied to the payment of her judgment and in satisfaction of the liens existing on the land. The judgment was subsequently reversed, and a retrial resulted on February 27, 1892, in a judgment for $9,000, with interest and costs, and a second amended bill was filed so alleging.

The Circuit Court of Appeals did not deem it essential to give a history of the many years of "hard fought and well contested litigation," which followed, but stated that the case was pending and undisposed of by the Circuit Court of Barbour County, October 30, 1899, when Pickens was adjudicated a bankrupt by the District Court of the United States for the District of West Virginia on a petition filed October 27. After the adjudication, and on November 2, 1899, Pickens filed an answer in the chancery cause, in which he set up the proceedings in bankruptcy, asked that all further action in the State court might be suspended until the District Court had disposed of those proceedings, and contended that all his estate,

rights and interests of every kind and description, had passed from the control of the Circuit Court of Barbour County and into the jurisdiction of the District Court. On November 18, 1899, a trustee in bankruptcy was appointed for Pickens' estate, who in February, 1900, presented to the Circuit Court of Barbour County his petition in the chancery cause, asking that he be made a party, that his petition stand as an answer, and that the Circuit Court proceed to the enforcement of the liens against the bankrupt's estate; and, thereafter, on February 23, 1900, that court rendered a decree by which, among other things, it was ordered that the deed of trust referred to in the bill be set aside as fraudulent and that a special commissioner and receiver therein named should rent the land described until a certain day and then sell the same, the proceeds thereof to be applied to the payment of the debts due by Pickens. November 20, 1899, complainant Dent, "without waiving her preference," tendered her proof of debt before the referee in bankruptcy, it being the judgment in question, which was allowed as a preferred claim against the bankrupt's estate.

The receiver and commissioner appointed in the chancery court was proceeding to execute the decree therein when Pickens filed his bill in the District Court March 31, 1900, against Dent and others, rehearsing the facts relating to the suit and to the proceedings in bankruptcy, charging that the trustee was not authorized to intervene in the chancery cause, and asserting that the State court on the filing of Pickens' answer setting up his adjudication should have taken no further action, and that, therefore, the decree appointing the commissioner and receiver to rent and sell the real estate was without authority of law and void.

The prayer was that defendants be restrained from all further proceedings in the suit so pending in the Circuit Court of Barbour County until the termination of the bankruptcy proceedings; that the receiver and commissioner be enjoined from executing the decree during their pendency; and that the possession and control of the property be turned over to the trustee to be administered under the direction of the court in bankruptcy.

A preliminary injunction was granted by the district judge, which was dissolved July 26, 1900, and Pickens' bill dismissed with costs. From that decree this appeal was taken.

Such being the state of facts, the Circuit Court of Appeals held that the District Court had no jurisdiction of the suit, even if it had been brought in the name of the trustee, who could not have sued defendants below in that court in respect of the bankrupt's property, unless by consent, while the bankrupt himself had no standing in that court after adjudication, *Bardes* v. *Hawarden Bank*, 178 U. S. 124; and further, that as the Circuit Court of Barbour County had at the time of the adjudication, and had had for years, complete jurisdiction and control over the bankrupt and his property, that jurisdiction was not divested by the proceedings in bank-

ruptcy, and it was the right and duty of that court to proceed to final decree notwithstanding adjudication, the rule being applicable that the court which first obtains rightful jurisdiction over the subject matter should not be interfered with. *Frazier* v. *Southern Loan and Trust Company*, 99 Fed. Rep. 707. And Goff, J., speaking for the court, said: "The bankrupt act of 1898 does not in the least modify this rule, but with unusual carefulness guards it in all of its detail, provided the suit pending in the State court was instituted more than four months before the District Court of the United States had adjudicated the bankruptcy of the party entitled to or interested in the subject matter of such controversy."

The court also ruled that the mere fact that complainant Dent proved up her judgment as a preferred debt in bankruptcy, when, and as she did, did not operate to deprive the State court of jurisdiction, nor amount to a consent to the exercise of jurisdiction by the District Court as invoked.

We are of opinion that the Circuit Court of Appeals was right in its rulings. The case in the one aspect came within *Bardes* v. *Hawarden Bank*, and in the other within the rule applied. *Metcalf* v. *Barker*, *ante*, p. ——.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.